

No. 4694

United States ⁷
Circuit Court of Appeals
For the Ninth Circuit.

FRANCES INVESTMENT COMPANY, a Cor-
poration,

Appellant,

vs.

JASPER THOMASON,

Appellee.

Transcript of Record.

Upon Appeal from the United States District Court for
the Southern District of California,
Southern Division.

FILED

SEP 21 1925

F. D. MONCKTON,
CLERK

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[Clerk's Note: When deemed likely to be of an important nature, errors or doubtful matters appearing in the original record are printed literally in italic; and, likewise, cancelled matter appearing in the original record is printed and cancelled herein accordingly. When possible, an omission from the text is indicated by printing in italics the two words between which the omission seems to occur.]

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Names and Addresses of Attorneys.

For Plaintiff and Appellant:

WILLIAM STORY, JR., Esq.,
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Bartlett Building,

and

LAURENCE W. BEILENSEN, Esq., of Coun-
sel, Suite 1231 C. C. Chapman Building, Los
Angeles, California.

For Defendant and Appellee:

WM. T. KENDRICK, Esq, Van Nuys Building;
NEWLIN & ASHBURN, Esqrs., Suite 935 Title
Insurance Building, Los Angeles, California.

United States of America, ss.

To the defendant Jasper Thomason, and to William T. Kendrick, Esquire, and Newlin and Ashburn, Esquires, his solicitors, Greeting:

You are hereby cited and admonished to be and appear at a United States Circuit of Appeals for the Ninth Circuit, to be held at the City of San Francisco, in the State of California, on the 19th day of August, A. D. 1925, pursuant to petition for appeal and order allowing appeal filed in the Clerk's Office of the District Court of the United States, in and for the Southern District of California, in that certain case in the District Court of the United States, Southern District of California, Southern Division, in Equity, D-61-J, in which Frances Investment Company, a corporation, is plaintiff, and Friend J. Austin, et al, and you are defendants to show cause, if any there be, why the order entered on the 25th day of May, 1925, quashing the service on defendant Jasper Thomason and setting aside the decree as to defendant Jasper Thomason, and the order entered on the 9th day of July, 1925, denying plaintiff's motion to set aside said order of May 25th, 1925, in the said suit in equity hereinbefore mentioned, should not be corrected, and speedy justice should not be done to the parties in that behalf.

WITNESS, the Honorable WILLIAM P. JAMES United States District Judge for the Southern District of California, this 20th day of July, A. D. 1925, and of the Independence of the United States, the one hundred and fifty-*first*

Wm P James

U. S. District Judge for the Southern District of California.

Received a copy of the within Citation this 20th day of July, 1925.

Wm. T. Kendrick

Newlin & Ashburn

Solicitors for Defendant Jasper Thomason appearing specially herein for purpose of contesting jurisdiction over person and not appearing generally herein.

[Endorsed]: IN THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE NINTH CIRCUIT FRANCIS INVESTMENT COMPANY, A CORPORATION, Plaintiff, vs. FRIEND J. AUSTIN, et al., Defendants. Citation FILED JUL 20 1925 CHAS. N. WILLIAMS, Clerk By R S Zimmerman Deputy Clerk.

In Equity

No.

UNITED STATES DISTRICT COURT, SOUTH-
ERN DISTRICT OF CALIFORNIA,
SOUTHERN DIVISION.

FRANCES INVESTMENT)	
COMPANY, a corporation,)	
	)	Plaintiff,
)	
	)	vs
FRIEND J. AUSTIN, LET-)	
TIE M. AUSTIN, his wife,)	
WILLIAM MARTIN BEL-	)	BILL IN EQUITY.
FORD, and ANNIE MARIE)	
BELFORD, his wife, and THE)	
PEOPLES ABSTRACT &)	
TITLE COMPANY, a corpor-)	
ation,)	
	)	Defendants.

TO THE HONORABLE JUDGES OF THE DIS-
TRICT COURT, SOUTHERN DISTRICT OF
CALIFORNIA, SOUTHERN DIVISION:

Frances Investment Company, a corporation organized and existing under and by virtue of the laws of the state of Utah, and a resident of said state, with its principal place of business in the city of Salt Lake, state of Utah, brings this its bill against Friend J. Austin, Lettie M. Austin, his wife, William Martin Belford, Annie Marie Belford, his wife, citizens of the state of California and residents of the county of Imperial, state of California, and The Peoples Abstract & Title Company, a corporation organized and existing under and by virtue of the laws of the state of California, with its principal place of business in the city of El Centro, county of Imperial, state of California,

and in the southern division of the southern district of California.

And for its cause of action plaintiff states:

1. That this suit is one between citizens and residents of different states, in that at the time of the commencement of this suit the plaintiff is a corporation organized and existing under and by virtue of the laws of the state of Utah, with its principal place of business in the city of Salt Lake, state of Utah, and is a resident of said state of Utah; the defendants Friend J. Austin, Lettie M. Austin, William Martin Belford and Annie Marie Belford are citizens of the state of California and residents of the county of Imperial, in the state of California; The Peoples Abstract & Title Company is a corporation organized and existing under and by virtue of the laws of the state of California, with its principal place of business in the city of El Centro, county of Imperial, state of California, and is a resident of said county of Imperial, state of California.

2. That the amount in controversy herein exceeds the sum of \$3,000.00, exclusive of interest and costs.

3. That the Delta Land & Water Company is now, and was during all the times herein mentioned, a corporation organized and existing under and by virtue of the laws of the state of Nevada.

4. That on or about the first day of January, 1916, in the county of Beaver, state of Utah, the said defendants Friend J. Austin and Lettie M. Austin, his wife, for a valuable and adequate consideration, made and executed their joint and several promissory

note, in writing, bearing date on that date in words and figures as follows, to wit:

“\$55,000.00 Milford Utah, Jan. 1, 1916.

For value received, we jointly and severally promise to pay to Delta Land & Water Company, or order, at its office in Milford, Beaver County, Utah, Fifty-five Thousand Dollars, in installments, as follows:

 \$ 5,000 on or before three years after date

 5,000 on or before four years after date

 5,000 on or before five years after date

 5,000 on or before six years after date

 5,000 on or before seven years after date

 10,000 on or before eight years after date

 10,000 on or before nine years after date

 10,000 on or before ten years after date

together with interest, payable annually on January first of each year, commencing with the year 1917, on each and all of said installments, at the rate of six per cent. per annum from date hereof until maturity. If any installment of principal or interest be not paid at maturity thereof, such installment, together with interest then due thereon, shall bear interest from maturity thereof until paid at the rate of eight per cent. per annum. If default be made, and continue for thirty days, in the payment of any installment of principal or interest, or any part thereof, the entire unpaid principal of this note and all accrued interest thereon shall become immediately due and payable at the option of the legal holder hereof. If suit be

brought for the collection of this note, we agree to pay a reasonable attorney's fee in addition to the amount hereinbefore mentioned, which we agree shall be taxed as part of the costs of the suit and included in any judgment rendered in the action.

Friend J. Austin

Lettie M. Austin.

(I. R. S. \$11.00 affixed to original and cancelled.)”

and then and there delivered the same to the said Delta Land & Water Company.

5. That the said defendants Friend J. Austin and Lettie M. Austin, his wife, to secure the payment of the said principal sum and interest thereon as mentioned in said promissory note, according to the tenor thereof, and as part of the same transaction, did at said time and place execute under their hands and seals and deliver to The Peoples Abstract & Title Company, defendant, for the benefit of the said Delta Land & Water Company, a certain trust deed and mortgage also bearing date on the first day of January, 1916, which said trust deed and mortgage is in words and figures as follows, to wit:

THIS INDENTURE made this 1st day of Jany., 1916, between Friend J. Austin and Lettie M. Austin, his wife, of Beaver County, Utah, hereinafter called “first parties”, Delta Land & Water Company, a corporation organized under the laws of Nevada, hereinafter called “second party”, and the Peoples Abstract

& Title Co., a corporation organized under the laws of California, hereinafter called the "Trustee",

WITNESSETH: That

WHEREAS, at the date hereof first parties are indebted in various amounts, including certain indebtedness now owing by them to second party, and also desire to secure from second party, from time to time hereafter, such further amount or amounts as they may require for the improvement, equipment and stocking of their farm in Beaver County, Utah, all of which indebtedness first parties desire to consolidate in the form of one secured loan not exceeding in principal amount the sum of Fifty-five Thousand Dollars, and

WHEREAS, in consideration of its agreement to advance them funds with which to pay their present indebtedness to said Delta Land & Water Co. and certain other indebtedness secured by mortgage on part of the property described in the trust deeds hereinafter mentioned, as well as to advance them such further amounts as they may require for said purposes, not exceeding in principal amount the sum aforesaid, first parties have, contemporaneously with the execution hereof, executed and delivered to second party their joint and several note for the full principal sum of Fifty-five Thousand Dollars in words and figures following, viz:

"55,000.00 Milford, Utah, Jan. 1, 1916.

For value received, we jointly and severally promise to pay to Delta Land & Water Company, or order, at its office in Milford, Beaver County,

Utah, Fifty-five Thousand Dollars in installments as follows:

- \$ 5,000 on or before three years after date
- 5,000 on or before four years after date
- 5,000 on or before five years after date
- 5,000 on or before six years after date
- 5,000 on or before seven years after date
- 10,000 on or before eight years after date
- 10,000 on or before nine years after date
- 10,000 on or before ten years after date

together with interest, payable annually on January first of each year, commencing with the year 1917, on each and all of said installments, at the rate of six per cent. per annum from date hereof until maturity. If any installment of principal or interest be not paid at maturity thereof, such installment, together with interest then due thereon, shall bear interest from maturity thereof until paid at the rate of eight per cent per annum. If default be made, and continue for thirty days, in the payment of any installment of principal or interest, or any part thereof, the entire unpaid principal of this note and all accrued interest thereon shall become immediately due and payable at the option of the legal holder hereof. If suit be brought for the collection of this note, we agree to pay a reasonable attorney's fee in addition to the amount hereinbefore mentioned, which we agree shall be taxed as part of

the costs of the suit and included in any judgment rendered in the action.

Friend J. Austin

Lettie M. Austin.

(I. R. S. \$11.00 affixed to)

(original and cancelled)

and

WHEREAS, first parties are desirous of securing not only the prompt payment of any and all amounts which may at any time be due and owing by them on said note, but also of effectually securing and indemnifying second party for or on account of any assignment, endorsement or guarantee which it may make of or concerning said note.

NOW, THEREFORE, in consideration of the premises and of the sum of One Dollar to them in hand paid by the Trustee, receipt of which by them is hereby acknowledged, first parties have granted, bargained, sold, conveyed, assigned and transferred, and do hereby grant, bargain, sell, convey, assign and transfer, unto said The Peoples Abstract & Title Co., as Trustee, its successors-in-trust and assigns, the following described premises, situate in Imperial County, California, to wit:

The east one-half of Section Twenty, Township Twelve South, Range Fourteen East, San Bernardino Meridian; containing 320 acres, more or less;

together with 300 shares of the capital stock of Imperial Water Company No. 3, a corporation organized under the laws of California, evidenced by Certificates

Nos. 149 and 463 for 150 and 150 shares, respectively, which by the terms of said certificates and the By-Laws of said Water Company, are appurtenant to the lands aforesaid.

TO HAVE AND TO HOLD the same, together with the improvements, appurtenances and privileges thereunto belonging or in any wise appertaining, unto the said Trustee, its successors-in-trust and assigns, forever, but

IN TRUST, NEVERTHELESS, as security for the payment of their promissory note aforesaid and such further amounts as second party or said Trustee may expend in protecting the title to said property or any part thereof under the provisions of this Indenture.

PROVIDED, HOWEVER, and this Indenture is made on the express condition, that if first parties, their heirs or assigns, shall pay said note, according to its tenor, and any and all other indebtedness secured hereby, as required by said note and this indenture, and shall keep, perform and observe all and singular the covenants and agreements in said note and this Indenture expressed, by them to be kept, performed and observed, the estate and rights granted, bargained, sold, conveyed, assigned and transferred by this Indenture shall immediately cease and terminate, but otherwise shall remain in full force and effect; and

PROVIDED FURTHER, that while not in default as to the payment of the principal or interest of the note aforesaid, or as to any of their covenants herein contained, first parties shall have the right and be permitted to hold and possess said property and the

appurtenances and privileges thereunto belonging, and to collect and use the income, rents, profits and returns thereof, except as herein expressly provided.

FIRST PARTIES further covenant and agree as follows:

First: That at the time of the execution of this Indenture they are lawfully seized and possessed of all and singular the premises and shares of stock aforesaid in fee simple, and have good right, full power and lawful authority to grant, bargain, sell, convey, assign and transfer the same in manner and form aforesaid, hereby fully and absolutely waiving and releasing all rights and claims which they or either of them may have in or to said premises or any part thereof, as a homestead exemption, under and by virtue of any law of the State of California now existing or which may hereafter be enacted by the legislature of the State of California in relation to homestead exemptions, and that the same are free and clear of all liens and encumbrances whatsoever, except a certain mortgage executed by the grantors herein in favor of the Pacific Mutual Life Insurance Co. to secure a promissory note executed by the grantors herein for Six Thousand Dollars recorded at page 57 of Book 35 of the official records of said Imperial County and covering the NE $\frac{1}{4}$ of said section 20 Township 12 South Range 14 East San Bernardino Meridian and 150 shares of the capital stock of the Imperial Water Co. No. 3 evidenced by Certificate No. 463 which said certificate is now pledged with and held by said Pacific Mutual Life Insurance Co.

Second: That they will pay all taxes levied on said premises at or before the time the same become delinquent by law, and also all assessments which may be made or levied upon said stock, or any part thereof, at or before the time the same become delinquent by law or by the terms and provisions of the By-laws of said Imperial Water Company No. 3; that they will keep all buildings which may at any time be on said premises (until the indebtedness evidenced by said note is paid in full) insured in such company or companies as the holder of said note may from time to time direct, to the extent of the insurable value thereof, not exceeding the amount of said indebtedness (provided first parties shall have the right to insure such improvements for a greater sum if they desire so to do), and will assign and deliver the policy or policies issued for such insurance to the legal holder of said note as further security for the payment of same; and that in case of refusal or neglect on their part to insure the improvements on said premises, or to assign or deliver such policies of insurance, or to pay such taxes or assessments, then the Trustee herein or the then legal holder of said note, or either of them, may procure such insurance or pay such taxes or assessments, and all moneys thus paid, with interest thereon from date of payment at eight per cent. per annum, shall become so much additional indebtedness secured by this Indenture, and shall be paid from the proceeds of the lands and stock aforesaid, if not otherwise paid by first parties.

Third: That in case default shall be made by first parties in the payment of said note or of any install-

ment thereof, or in the payment of interest thereon, according to the tenor and effect of said note, and such default shall continue for a period of thirty days, or in case first parties shall make default in the performance of any other covenant herein contained by them to be kept and performed, and such default shall continue for a period of thirty days after written notice of such last mentioned default and demand for performance of such covenants shall have been mailed to them by the Trustee, or the then legal holder of said note, addressed to them at Milford, Utah, second party, or the then legal holder of said note, shall have the right, at its or his option, to declare all of the indebtedness secured hereby to be immediately due and payable,—anything in said note or this Indenture to the contrary notwithstanding, and upon notice and demand in writing, filed with the Trustee by second party, or the then legal holder of said note, that second party, or such legal holder, has declared a breach of this Indenture and has elected to advertise said premises for sale and demanding that the said Trustee shall sell said premises pursuant to the terms and provisions of this Indenture, it shall be lawful for the said Trustee to sell and dispose of the said premises and stock en masse or in separate parcels as the Trustee may think best, and all right, title and interest of first parties, their heirs or assigns, therein, at public auction, at the front door of the County Court House in El Centro, Imperial County, California, or on said premises or any part thereof as may be specified in the notice of such sale, for the highest and best price that the same will bring in cash, after giving not less than

four weeks' public notice of the time and place of such sale by weekly advertisement in some newspaper of general circulation in said Imperial County, California, —a copy of which printed notice, so soon as printed, shall be mailed to first parties at Milford, Utah, and to all subsequent encumbrancers of the premises to be sold, at the addresses given in the recorded instruments evidencing their several encumbrances, and to execute and deliver to the purchaser or purchasers of such lands and stock at such sale or sales a deed or deeds for the lands and premises sold, and such assignment or other transfer as may be necessary to vest the title to the said premises and stock in the purchaser or purchasers and their assigns, which said deed or other transfer shall be in the ordinary form of conveyance and shall be signed, acknowledged and delivered by the said Trustee, as grantor, and shall convey and quit-claim to the person or persons entitled to such deed or deeds, as grantee or grantees, the lands and stock sold as aforesaid and all the right, title, interest, benefit and equity of redemption of first parties, their heirs and assigns therein; and such deed or deeds shall recite the amount for which the said lands and stock conveyed thereby were sold and shall refer to the power of sale herein contained and the sale or sales made by virtue hereof; but the notice of such sale need not be copied into such deed or deeds; and the said Trustee, out of the proceeds of such sale, after first paying and retaining its reasonable charges and costs of advertising the land and stock for sale and selling the same, shall pay to second party, or the then legal holder of said note, the principal and interest due

thereon, according to its tenor and effect, and all moneys advanced by the Trustee or by the legal holder of said note for insurance, taxes or assessments, with interest thereon at the rate aforesaid, and shall render the surplus, if any, unto the said first parties, their legal representatives or assigns. The recitals of fact contained in such deeds shall be conclusive evidence of the facts therein recited, and the sale or sales and deed or deeds so made and executed by the Trustee shall be a perpetual bar, both in law and in equity, against first parties, their heirs and assigns and all other persons claiming the premises and stock aforesaid or any part thereof under, from or through first parties or either of them. The legal holder of said note, at the time of sale of said premises by the Trustee, may purchase said property or any part thereof, and it shall not be obligatory upon the purchaser or purchasers at any such sale to see to the application of the purchase money. In case an action is brought in any court of competent jurisdiction to foreclose this Indenture, second party, or the then legal holder of said note, may have a receiver appointed in said action, as a matter of right, to take immediate possession of said premises, and to cultivate the same as well as to use the water to which first parties, as the owners of said stock, may be entitled for the irrigation of said lands, and to harvest and market the crops raised thereon and to collect the rents, issues and profits thereof for the use and benefit of the then legal holder of said note, pending such foreclosure and during the period of redemption allowed by law to first parties or subsequent encumbrancers of said premises.

IN CONSIDERATION of the premises and of the foregoing covenants of first parties, second party agrees that in the event it does not advance to first parties the full principal sum of Fifty-five Thousand Dollars, including their present indebtedness to it as aforesaid, it will not assign, endorse or hypothecate said note without first endorsing thereon the difference between the principal amount of said note and the principal amount of the advancements which at the time of such assignment, endorsement or hypothecation it shall have made to first parties, and that at the end of each annual period it will endorse and credit upon said note the interest on the difference between the principal amount of said note and the principal amount of first parties' actual indebtedness to it, at the rate specified in said note.

AND IN CONSIDERATION of the conveyance made to it as aforesaid and of the covenants of first parties herein contained, the Trustee accepts the trust created by the execution and delivery of this Indenture and agrees to perform the duties devolving upon it as hereinbefore set forth; provided, however, that by accepting such trust the Trustee does not assume any responsibility in respect to the sufficiency of this Indenture, the title of first parties to the premises or stock herein described or any part thereof, nor shall it be obligated to see to the recording of this Indenture nor to take any action in court or otherwise for the purpose of protecting its title to said lands and stock or any interest of second party or the legal holder of said note therein, nor shall it be obligated to

exercise its power of sale hereunder unless it be fully indemnified by second party, or the then legal holder of said note, in such reasonable manner and amount as it may require to insure the payment of its proper charges for such services and against any and all loss and expense which it may incur in so doing.

IN WITNESS WHEREOF, first parties have hereunto subscribed their names and affixed their seals, and second party and said Trustee have hereunto caused their corporate names to be subscribed by their respective Vice-Presidents thereunto duly authorized and their seals to be affixed by their respective secretaries, the day and year first above written.

(SEAL D. L. FRIEND J. AUSTIN (SEAL.)
& W. Co.) LETTIE B. Austin (SEAL)
Attest: DELTA LAND & WATER COMPANY
H. B. Prout By Geo. A. Snow,
Secretary. Its Vice-President.

THE PEOPLES ABSTRACT & TITLE CO.
Attest: By Philo Jones,
W. H. Lovayea Its Vice-President.
(SEAL P. A.
& T CO.)

STATE OF *BEAVER*)
) SS
COUNTY OF *BEAVER*)

On this 7th day of February, 1916, before me, G. P. Holmes, a Notary Public in and for said County State, residing therein, duly commissioned and sworn, personally appeared Friend J. Austin and Lettie M. Austin, his wife, known to me to be the persons whose

names are subscribed to the within instrument, and acknowledged to me that they had executed the same.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal the day and year in this certificate first above written.

G. P. Holmes

Notary Public in and for the County of Beaver, State of Utah.

My commission expires May 25, 1919.

State of Utah,)
) ss.
County of Salt Lake.)

On this 19th day of February, 1916, before me, A. E. Burdette, a Notary Public in and for said County and State, residing therein, duly commissioned and sworn, personally appeared George A. Snow, known to me to be the Vice-President of Delta Land & Water Company, one of the corporations that executed the within instrument, and the said George A. Snow acknowledged to me that such corporation executed the same.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal the day and year in this certificate first above written.

A. E. Burdette

Notary Public in and for Salt Lake County, State of Utah.

My commission expires Nov. 2, 1917.

STATE OF CALIFORNIA,)
) ss.
 County of Imperial.)

On this 3rd day of March, in the year one thousand nine hundred and sixteen, before me, J. J. Simmons, a Notary Public in and for said County and State, residing therein, duly commissioned and sworn, personally appeared Philo Jones, known to me to be the Vice-President of The Peoples Abstract & Title Company, one of the corporations that executed the within instrument, and the said Philo Jones acknowledged to me that such corporation executed the same.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal the day and year in this certificate above written.

J. J. Simmons
 Notary Public in and for Imperial
 County, State of California.

My commission expires April 19, 1917.

[Endorsed]: Recorded at request of The Peoples Abstract and Title Company Mar. 30, 1916, at 20 Min. Past 8 A. M. in Book 107, Page 351 of Deeds Imperial County Records FRANK ERZINGER, County Recorder By 80 Deputy. Fees \$3.00

That said trust deed and mortgage was also signed by the Delta Land & Water Company and by The Peoples Abstract & Title Company on or about the said first day of January, 1916, and the said trust deed and mortgage was duly executed and certified by all of the parties executing the same, so as to entitle it to be recorded, and the said trust deed was afterwards, to wit, on the 30th day of March, 1916, duly recorded in

the office of the county recorder of the county of Imperial, state of California, in book 107 of deeds, page 351.

6. That the said defendants Friend J. Austin and Lettie M. Austin, his wife, as further security for the payment of the principal sum and interest mentioned in their aforesaid promissory note of January 1, 1916, according to the tenor thereof, and as part of the same transaction, did at the same time and place transfer and assign to the Delta Land & Water Company that certain promissory note of the defendant Annie Marie Belford, dated June 20, 1914, in the principal sum of \$10,000.00, due five years after date, payable to the defendant Friend J. Austin, bearing interest at the rate of eight per cent per annum, payable semi-annually, and the mortgage of the said defendant Annie Marie Belford securing said promissory note, which said note and mortgage were, and are, in words and figures as follows, to wit:

-: REAL ESTATE MORTGAGE :-

Short form.

THIS MORTGAGE, made this Twentieth day of June in the year nineteen hundred and Fourteen by Annie Belford of Alamorio, California, Mortgagor to Friend J. Austin of Calipatria, California, Mortgagee, WITNESSETH: That

The Mortgagor mortgages to the Mortgagee the real property situate in the County of Imperial, State of California, and described as follows, to wit:

Northeast Quarter of Section 8, Tp. 14 South,
R. 16 East, S. B. M. 160 acres according to plat

of Survey approved Oct. 18, 1856, being Southwest Quarter of the Northeast Quarter, Southeast Quarter of the Northwest Quarter, Lots 8 and 10, Sec. 3, Tp. 14 South, R. 16 East, S. B. M., California, containing 141.95 acres, according to plat of resurvey approved Nov. 4, 1908, together with one hundred and thirty-four (134) shares of the capital stock of Imperial Water Co. #5 evidenced by certificate #2303 of said Imperial Water Co. #5.

TOGETHER with all and singular the tenements, hereditaments and appurtenances thereunto belonging, or in anywise appertaining, and the reversion and reversions, remainder and remainders, rents, issues and profits thereof.

AS SECURITY for the payment of One Promissory Note, of which the following is a true copy, to-wit:

“10,000.00

June 20th, 1914.

Five years after date, for value received, I, Annie Belford promise to pay to Friend J. Austin, or order, at The First National Bank at Brawley, California, the sum of Ten Thousand (\$10,000.00) Dollars with interest at the rate of eight per cent. per annum from date until paid, interest payable semi-annually, and, if not so paid, to be compounded semi-annually and bear the same rate of interest as the principal; and should the interest not be paid when due, then the whole sum of principal and interest shall become immediately due and payable at the option of the holder of this note. Principal and interest payable in gold coin of the United States.

ANNIE BELFORD”

AND THE MORTGAGOR promises to pay said note according to the terms and conditions thereof, and in case of default in the payment of the same, or of any installment of interest thereon when due, the Mortgagee, his heirs or assigns, may declare the whole debt immediately due and payable, and may foreclose this mortgage, and may include in such foreclosure a reasonable counsel fee, to be fixed by the court, together with all payments made by the Mortgagee for taxes and assessments on said premises, including taxes on the interest of the Mortgagee therein by reason of this mortgage; and for insurance of the buildings on said premises paid by the mortgagee, and for any adverse claims to the mortgaged property paid by mortgagee, as well as the cost of searching title to the mortgaged premises, subsequent to the execution hereof, all of which payments the mortgagee is hereby authorized to make, and the same with interest thereon at the same rate as provided in said Promissory Note, together with said counsel fees, are secured by this Mortgage, and payable to the Mortgagee, his heirs or assigns, in United States gold coin, out of the proceeds of sale under said foreclosure.

WITNESS the hand and seal of the Mortgagor.

ANNIE BELFORD (SEAL)

SIGNED, SEALED AND DELIVERED
IN THE PRESENCE OF

STATE OF CALIFORNIA,)
) ss.
 County of Imperial.)

ON THIS 20th day of June in the year nineteen hundred and Fourteen, before me Earl C. Pound, a Notary Public in and for said County, residing therein, duly commissioned and sworn, personally appeared Annie Belford, known to me to be the person whose name is subscribed to the within instrument and acknowledged to me that she executed the same.

WITNESS my hand and official seal.

(SEAL)

EARL C. POUND

Notary Public in and for said
 County of Imperial, state of
 California.

 No. 56

M O R T G A G E

Short form.

Order No.-----

When recorded, please mail
 this instrument to

Annie Belford, Alamorio,
 California,

Friend J. Austin
 Calipatria, Calif.

to

Friend J. Austin, Calipatria, Calif.

Dated June 20th, 1914.

Recorded at request of First National Bank Imperial, June 22, 1914, at 36 min. past 2 P. M. in Book 30, Page 142, et seq. of Mortgages, Imperial County records.

JOHN NORTON,
 County recorder.

By.....
 Deputy.

Fees \$1.30. Indexed, compared.

That the aforesaid mortgage of the defendant Annie Marie Belford to the defendant Friend J. Austin was recorded on June 22, 1914, in book 30, page 142, et seq, of mortgages, Imperial county records, California.

7. That said defendants Friend J. Austin and Lettie M. Austin, his wife, as further security for the payment of the principal sum and interest mentioned in their aforesaid promissory note of January 1, 1916, according to the tenor thereof, and as part of the same transaction, did, at the same time and place, transfer and assign to the Delta Land & Water Company that certain promissory note of one Joseph Carrick, dated March 3, 1915, for the principal sum of \$12,000.00, payable to the order of Friend J. Austin five years after date, with interest at eight per cent per annum, payable semi-annually, and a mortgage of the said Joseph Carrick, as mortgagors, in favor of Friend J. Austin, as mortgagee, upon the southwest quarter of section 4, township 12 south, range 15 east, San Bernardino Meridian, in Imperial County, California, and 150 shares of the stock of Imperial Water Company No. 3, issued to the said Joseph Carrick, and assigned by said Joseph Carrick to the said Friend J. Austin, which said mortgage is recorded on page 183, book 35 of mortgages in said Imperial county records.

8. That thereafter and on or about the 5th day of March, 1917, the Frances Investment Company, plaintiff herein, in due course of business, for a valuable and adequate consideration, and prior to maturity, purchased and acquired of and from the Delta Land & Water Company, and the Delta Land & Water Company at said time endorsed, transferred and assigned to the plaintiff, the aforesaid promissory note exe-

cuted on January 1, 1916, by Friend J. Austin and Lettie M. Austin, and also the aforesaid promissory note and mortgage of the defendant Annie Marie Belford, dated June 20, 1914, and the aforesaid promissory note and mortgage of Joseph Carrick, dated March 3, 1915, and ever since said 5th day of March, 1917, the plaintiff has been, and now is, the lawful owner and holder of said promissory notes and each of them. That on or about the date of the assignments thereof to it, as aforesaid, the plaintiff duly notified the said Annie Marie Belford and Joseph Carrick that their respective notes and mortgages had been sold and assigned to it, and on or about the 30th day of November, 1917, the plaintiff notified the defendant The Peoples Abstract & Title Company in writing that the aforesaid promissory note of the defendants Friend J. Austin and Lettie M. Austin had been assigned to it, and that it, the plaintiff, was the lawful owner and holder of same. That on the 30th day of November, 1917, the plaintiff caused to be recorded in book 5, page 1, of assignments, Imperial county records, California, the assignment by the Delta Land & Water Company to the plaintiff of the aforesaid promissory note and mortgage of the defendant Annie Marie Belford hereinbefore set forth, and on the 30th day of November, 1917, caused to be recorded in book 5, page 2, of assignments, Imperial county records, California, the assignment by the Delta Land & Water Company to the plaintiff of the aforesaid note and mortgage of Joseph Carrick.

9. That no part of the principal of said promissory note of the defendants Friend J. Austin and Lettie M. Austin has been paid, and no part of the interest of said

note has been paid, except the sum of \$1965.45, which was paid on account of such interest at or about the time of the purchase of said note by the plaintiff, in consequence whereof this plaintiff has elected to, and hereby does, declare the principal of said note, together with all accrued and unpaid interest thereon to be now due and payable.

10. That no part of the principal or interest of said promissory note of the defendant Annie Marie Belford has been paid except the interest thereon to July 20, 1917; in consequence whereof the plaintiff has elected to, and hereby does, declare the principal of said note, together with the interest thereon from the 20th day of July, 1917, to be now due and payable.

11. That on the second day of October, 1917, the defendants Friend J. Austin and Lettie M. Austin, and the defendants William Martin Belford and Annie Marie Belford, with intent and design to cheat and defraud the plaintiff out of its security afforded by the aforesaid trust deed of date January 1, 1916, and to cheat and defraud the plaintiff out of the lien of the aforesaid mortgage of the defendant Annie Marie Belford, did file their verified petition in the office of the clerk of the superior court of the county of Imperial, state of California, praying for a decree of said court directing the registration of title under the terms and conditions of that certain law enacted by the people of the state of California, adopted and passed at the general election held on November 3, 1914, entitled "An Act to Amend an Act entitled, 'An Act for the Certification of Land Titles and the Simplification of the Transfer of Real Estate', approved

March 17th, 1897", of the real estate described in said petition, including the east one-half of section twenty, township 12 south, range 14 east, S. B. M., described in the aforesaid trust deed and mortgage of date January 1, 1916, and also including the southwest quarter of the northeast quarter, and the southeast quarter of the northwest quarter, lots 8 and 10, section 3, township 14 south, range 16 east, S. B. M., as described in the aforesaid mortgage of the defendant Annie Marie Belford of date June 20, 1914, which said verified petition was in words and figures as follows, to-wit:

IN THE SUPERIOR COURT OF THE STATE OF
CALIFORNIA, IN AND FOR THE COUNTY
OF IMPERIAL.

IN THE MATTER OF THE AP-)) No. 7 PETITION.
PLICATION OF FRIEND JAMES)	
AUSTIN, LETTIE MARY AUS-)	
TIN, WILLIAM MARTIN BEL-)	
FORD and ANNIE MARIE BEL-)	
FORD FOR INITIAL REGISTRA-)	
TION OF TITLE TO LAND.)	
)	
)	
)	

TO THE HONORABLE JUDGE OF THE SUPERIOR COURT OF THE STATE OF CALIFORNIA, IN AND FOR THE COUNTY OF IMPERIAL:

Your applicants hereby make application to have registered the title to the land hereinafter described,

as provided by that certain law enacted by the people of the State of California, adopted and passed at the General Election held on November 3rd, 1914, entitled "An Act to Amend an Act Entitled "An Act for the Certification of Land Titles and the Simplification of the Transfer of Real estate' Approved March 17th, 1897", and in that connection allege:—

I.

That as applicants are informed and believe, and therefore allege, there is no person who has any estate, or claim any interest in the, or any part of the, land hereinafter described other than as stated herein, in law or equity, in possession, remainder, reversion or expectancy; that applicants are free from any and all disabilities.

II.

That none of the property is subject to a homestead, and none is subject to any easement, lien, or encumbrance, unless and except as hereinafter specifically stated. That except as hereinafter specifically stated addresses given are the post office addresses of the parties in question, and where land is occupied that fact is specifically stated herein, and the full name and post office address respectively of each occupant and what interest he has, or claims, is stated, and said occupants have no other or further interest in the property other than as hereinafter stated. That all of the property is community property; that all of the property is located in the County of Imperial, State of California; that the value at which the land and the permanent improvements thereon were assessed on the last assess-

ment for County taxation are stated for each separate parcel of property; that whenever records are hereinafter referred to, said records are those in the office of the County Recorder of Imperial County, California, unless otherwise specifically stated; that applicants claim no part of the land within the limits of any ways designated on the maps hereinafter referred to, other than a reversionary interest therein, and that they do not desire to have the lines of said ways determined.

III.

That applicants' title to the respective parcels of said land as hereinafter set out, is perfect of record in the office of the County Recorder of said County; that title was obtained thereto by deeds, and that applicants have ever since owned said land and have not conveyed or encumbered the same except as stated herein; that applicants and their predecessors in interest have been in the actual, exclusive and adverse possession of the land herein described continuously for more than five years next preceding the filing of this petition, as the owners in fee simple, claiming to own the same against the world, and have paid all taxes of every kind legally levied or assessed against such property during said period; that the character of such possession is hereinafter specifically described; and the applicants have made, or caused to be made, diligent search and inquiry as to the owners, and their post office addresses, of the adjoining lands to those sought to be registered herein; that all such names and post office addresses are hereinafter set forth, in so far as they were, after diligent search and inquiry, disclose; that such search

and inquiry was made both in the neighborhood where said lands are located and also at the office of the County Assessor and County Tax Collector of said County, and all other places likely to acquaint applicants with such names and post office addresses; that your applicants verily believe that all such names and post office addresses are given in so far as the same can be ascertained by diligent inquiry.

IV.

That applicants FRIEND JAMES and LETTIE MARY AUSTIN are husband and wife; that their occupations are farmer and housewife, respectively; that their ages are sixty years and fifty-five years, respectively; that their residence and post office address is Calipatria, California; that the description of the land for which registration of title is prayed is;

Parcel 1: All of the East Half ($E\frac{1}{2}$) of section twenty (20), township twelve (12) south, range fourteen (14) east, San Bernardino Meridian, California, except a strip one hundred (100) feet wide there-through owned by the Inter-California Railway Company and more particularly described in deed recorded in Book 117 of Deeds, at Page 86, Imperial County Records; map on file in the office of the county recorder; assessed valuation, \$10,700.00.

That applicants claim an estate in fee simple in said land, as their community property; that as regards improvements and occupancy by applicants and their predecessors in interest during the five years last past, said land has been improved by levelling, irrigation and cultivation, and by the erection of buildings, and is now occupied by applicants.

That the names and post office addresses of the owners of adjoining lands are:

Inter-California Railway Company, a corporation, San Francisco, California; Ira Aten, El Centro, California; Title Insurance and Trust Company, Los Angeles, California (a corporation) C. I. Whitesell, Los Angeles, California;

That Parcel 1. of said land is subject to:

1. A right of way for an irrigation system and telephone lines over any part of said land, in favor of Imperial Water Company No. 3, a corporation, of Calipatria, California; recorded in Book 91, page 222 of deeds.

2. A mortgage of the North half ($N\frac{1}{2}$) of said land, being the Northeast Quarter ($NE\frac{1}{4}$) of said section twenty (20), dated February 16, 1915, recorded in Book 35, page 57, of Mortgages, given to secure the payment to The Pacific Mutual Life Insurance Company of California, a corporation of Los Angeles, California, of a promissory note of even date for Six Thousand (\$6000.00) Dollars, payable five years after date, with interest at eight per cent per annum, payable semi-annually.

Parcel 2: The Southwest Quarter ($SW\frac{1}{4}$) of Section Four (4), Township Twelve (12) South, Range Fifteen (15) East, San Bernardino Meridian, California; map on file in the office of the County Recorder; assessed valuation, \$5000.00.

That applicants claim an estate in fee simple in said land, as their community property; that as regards improvements and occupancy by applicants and their

predecessors in interest during the five years last past, said land has been improved by levelling, irrigation and cultivation, and by the erection of buildings, and is now occupied by Stephen A. Shepp, Calipatria, California, as tenant under written lease.

That the names and post office addresses of the owners of adjoining lands are:

Victor W. Bailey, 580 North Michigan Avenue, Pasadena, California; Lily G. Uzzell, 6100 Converse Street, Los Angeles, California; C. I. Whitesell, Los Angeles, California.

That Parcel 2 of said land is subject to:

1. A right of way for ditches, canals and telephone lines in favor of Imperial Water Company No. 3, a corporation, of Calipatria, California, as per deed recorded in Book 89 of deeds, at page 11.

2. An unrecorded lease, in favor of Stephen A. Shepp, of Calipatria, California, which expires January 1, 1919.

That the Delta Land and Water Company, a corporation of Milford, Utah, claims some right, title or interest in and to the lands above described as Parcel One, by virtue of a certain mortgage executed by Friend James Austin and Lettie Mary Austin, (hereinafter referred to as plaintiffs), on July 10th, 1914, and recorded September 24th, 1914, in Book 32, of Mortgages, at page 169; and a certain trust deed made and executed by plaintiffs on January 1st, 1916, to Peoples Abstract and Title Company, a corporation, of El Centro, California, and recorded March 30, 1916, in book 107, of deeds, at page 351, said trust deed being given

to secure the payment to said Delta Land and Water Company of a promissory note, of even date, for fifty-five thousand (\$55,000.00) dollars, and that said Delta Land & Water Company claims some right, title and interest in and to the land above described as Parcel Two by virtue of an assignment to said Company of a certain mortgage, said assignment being recorded in Book 4, of Assignments of Mortgages, at Page 113; that all the claims of said Delta Land and Water Company are without right, and void, and in that connection plaintiffs allege:

V.

That *that* defendant Delta Land and Water Company (hereinafter referred to as Delta Company) is, and at all times herein mentioned was, a corporation organized and existing under and by virtue of the laws of the State of Nevada, having an authorized capital stock of 100,000 shares of a par value of \$1.00 each, and doing business in the States of Utah and California; that at all times herein mentioned said Delta Land and Water Company was engaged in the business of buying and selling parcels of certain tract of land comprising about 15,000 acres, on the Beaver River, and adjacent to the Town of Milford, in Milford Valley, in the County of Beaver, State of Utah, and in colonizing said tract by procuring and inducing purchasers of parcels thereof to settle and live thereon, and in selling the capital stock of a certain corporation known as the Beaver County Irrigation Company (hereinafter referred to as Irrigation Company), and on or about July 10, 1914, said Delta Company was

engaged in the construction of a dam and reservoir on said Beaver River at a point in said river above the place where said river flows through said 15,000 acre tract, and in the construction of canals and ditches upon said tract for the distribution thereon of water from said river; that prior to the construction of said dam and reservoir said Beaver River flowed and took a course past and contiguous to the town of Adamsville in said Beaver County, and thence past and contiguous to the town of Minersville in said County, and thence through said 15,000 acre tract, and along the contiguous to the boundaries of said town of Milford, and thence through and beyond said Milford Valley; that ever since the construction of said dams and reservoir said river has continued to flow in and take the course above described. Plaintiffs are informed and believe, and upon such information and belief allege, that said Irrigation Company, a corporation, was organized and incorporated on or about April 30, 1913, by W. I. Moody, and other persons who were then officers of said Delta Company, and whose names are to plaintiffs unknown and has ever since existed under, and by virtue of the laws of the State of Utah, with an authorized capital stock of 15,000 shares of stock known as Class "A" of the par value of \$1.00 per share, and 15,000 shares of stock known as Class "B" of the par value of \$1.00 per share; that upon completion of the aforesaid dam and reservoir and distributing system said Delta Company sold the same to said Irrigation Company, and received therefor all of the capital stock of said Irrigation Company.

VI.

That on and prior to said July 10, 1914, at and in the County of Imperial, State of California, the defendant Delta Company falsely and fraudulently stated to the plaintiffs, as facts, that said Delta Company then owned 15,000 acres of fertile land in the tract adjoining the town of Milford in Milford Valley, in Beaver County, State of Utah, which is the same land described in paragraph V hereof, and of which the parcel of land hereinafter described in paragraph VII hereof is a part; that all of said tract, and particularly said parcel thereof, which is hereinafter described in paragraph VII, was then the richest type of soil found in the western part of the United States, and was rich, responsive, loamy soil, and of the best quality, fertile in every respect, free from alkali and noxious weeds, and suitable for and adapted to growing, and that there could be grown thereon, large crops of alfalfa, wheat, oats, barley, potatoes, sugar beets, asparagus, celery, onions, apples, pears, plums, cherries, and other small fruit, and kinds of garden truck; that said soil had been analysed and tested by experts in the employ of said Delta Company, and that its fertility had been by them established beyond all question; that said valley possessed a climate that produced bumper crops and had a long, even growing season, and warm, open winters; that with each acre of said land the defendant Delta Company would sell one share of the "Class "A" capital stock of the said Irrigation Company, and said defendant would not sell, or permit to be sold, and that they had not sold, and that they could not sell, a share

of said stock except in conjunction with the sale of an acre of said land; that each share of said stock entitled the holder thereof to one-fifteen-thousandth part of the water supply of said Irrigation Company to be used upon the acre of ground sold in conjunction with such share of stock as aforesaid; that the dam and reservoir and distributing system in paragraph V above described as then owned by said Irrigation Company was a million dollar system, and the construction thereof had cost one million dollars; that the said dam had a cement core running across and through it to bed rock; that said Irrigation Company then owned and was entitled to the use of all of the flow of water in said Beaver River, except 7500 acre feet per annum which was to be delivered to certain lands in said town of Minersville from an intake on said Beaver River at said town of Minersville, together with two cubic feet per second of water to be taken from below the aforesaid reservoir and above said point of diversion at Minersville for domestic and culinary uses the non-irrigation season, under a perpetual first right to the use of said quantities of water from the flow of said river, and all of said flow of water (except said quantities above excepted) then was owned outright and without restriction and entirely controlled by said Irrigation Company; that the flow of water in said Beaver River had been, and was, and would be *exhaustible*, and the amount thereof owned and controlled by said Irrigation Company as aforesaid had been, and was, and would be sufficient to furnish all necessary water for irrigating said 15,000 acres for

the growing of the aforesaid crops thereon, and that it furnished, and had furnished, and would furnish an average each and every year of not less than three acre feet of water per acre for each and every acre of said 15,000 acre tract; that none of said flow of water so owned and controlled by said Irrigation Company had been, or would, or could be sold or made appurtenant to or diverted to any other land or lands than the said 15,000 acre tract; that all of said flow of water so owned and controlled by said Irrigation Company was, and would be equally pro rated every year to each and every acre of said 15,000 acre tract; that the portion of said water to which each and every acre of said land, together with the share of said stock purchased therewith, was then entitled and would receive, was not less than three acre feet annually; that a record and survey of the flow of water in said Beaver River at said town of Minersville, Beaver County, Utah, had been made and kept by the United States government for each year during fourteen years immediately preceding said July 10, 1914, and said record showed there had been during fourteen years, and was, on or about July 10, 1914, an average flow of water in said river sufficient to fully irrigate 45,000 acres of such land as that in the above described 15,000 acre tract for the raising thereon of large and profitable crops of the hay, grain, vegetables, fruits and other products above named, each and every year; that with the water rights of said Irrigation Company in said river, together with its dam, reservoir, and distributing system, the purchasers of said 15,000 acre tract,

and of parcels thereof, had and would have an inexhaustible supply of water for use on said land at all times, without cost or charge for the water, except the cost of maintaining the said water system, and such cost should not and would not exceed thirty cents per acre per year; that the whole of said 15,000 acre tract was intended by said defendants to be sold, and said defendant would sell the same, and the whole thereof, in parcels, and upon a plan to make said tract, and the whole thereof, a large and prosperous farming colony with said irrigation system devoted to such development of said tract upon said plan and for exclusive use upon said tract, and said defendant would greatly increase the value of said tract for the purchasers thereof, and particularly of said parcel, in Paragraph VII described, for the plaintiffs, by such development of the whole of said tract; that the soil in said 15,000 acre tract, and particularly the soil in the parcel thereof described in Paragraph VII herein, was then especially adapted to the growing of alfalfa; that the land in said 15,000 acre tract and in said parcel thereof in Paragraph VII hereof described, was then of the reasonable and market value of not less than \$30.00 per acre, and the capital stock of said Irrigation Company was then of the reasonable and market value of \$70.00 per share; that the cost to clear, plow, level and make ready for seeding any and all of the land referred to and described in Paragraph VII hereof, was then, and would be, not to exceed \$6.00 per acre.

VII.

That on July 10, 1914, said plaintiffs and each of them, believed the statements and representations, and each of them, made by said defendant as aforesaid, and above set forth in Paragraph VI, to be true, and relied upon them, and each of them, and so believing and relying upon said statements and representations and each of them, and persuaded and induced by said statements and representations, plaintiffs on July 10, 1914, made and entered into an agreement to purchase from the said defendant a parcel of the above described 15,000 acre tract, which parcel is particularly described as follows: Lots One (1) and Two (2), and the Northwest Quarter ($NW\frac{1}{4}$) of the Southwest Quarter ($SW\frac{1}{4}$) of Section Fifteen (15) and the East Half ($E\frac{1}{2}$) of Section Sixteen (16), all in Township 29 South, Range 10 West, of the Salt Lake Basin and Meridian, Beaver County, Utah, and at the same time and place they agreed to purchase from said defendants 445 shares of the capital stock of said Irrigation Company, for which they gave to said Delta Company one note for \$13,197.00 payable on or before two years after date, with interest at the rate of 7 per cent per annum, said note being secured by a mortgage on the Southeast quarter of Section Twenty (20) township 12 South Range 14 East, S. B. M., Imperial County, California, and being further secured by an assignment to said defendant of a certain promissory note for \$10,000.00 made by Annie Belford, together with a mortgage securing the same on 144 acres of land, situate near Brawley in Imperial County, California, also

134 shares of stock in Imperial Water Company No. 5, a corporation, of Imperial County, California, nine notes of twenty-eight hundred (\$2800.00) Dollars each, with interest at 6 per cent per annum from January 1, 1915, one note for \$2730.00, with interest at 6 per cent per annum from January 1, 1915, and one note for \$3220.00 with interest at 6 per cent per annum from January 1, 1915; that all of said eleven notes last mentioned were secured by mortgage executed by plaintiffs upon the above described Beaver County, Utah, property; that plaintiffs did each and every thing on their part to be done or performed under and by virtue of the terms of said agreement; that plaintiffs would not, nor would either of them, have purchased said land, or signed, or made or executed, or delivered, said promissory notes, or any or either of them, or said mortgages above set forth, or have done any of the things on their part to be done or performed under and by virtue of the terms and conditions of said agreement, or any of the things done by them, or either of them, as in this complaint set forth, if said representations in Paragraph VI hereof set forth had not been made to them by the said defendant, or if plaintiffs had not believed and relied upon said representations and statements as true. That after the execution of said notes and of said mortgages as aforesaid, plaintiffs entered into possession of said first above described lands in Beaver County, Utah, and farmed the same and attempted to raise crops thereon during the season of 1915; that during the spring of 1915, to wit, on or about April 14, 1915, and before the failure of plaintiff's crops as hereinafter mentioned, said de-

fendant wrote a letter to plaintiffs wherein said defendant falsely and fraudulently represented to plaintiffs that said defendant would give plaintiffs certain discounts, as a bonus, if plaintiffs would be assigning to said defendant certain other securities owned by plaintiffs, make payment in advance of part of the interest and principal of the aforesaid securities given to said defendant by plaintiffs in payment for said land and water stock; that believing the statements and representations of said defendant, as set forth in aforesaid letters and relying upon them, plaintiffs assigned and delivered to said defendant a certain promissory note and mortgage made and executed by one William G. Richter and wife to plaintiffs, in which said note and mortgage plaintiffs were the owners and holders of an equity in the sum of \$4000.00, and plaintiffs are informed and believe, and on information and belief allege, that said defendants collected said \$4000.00 and received the benefits thereof; that plaintiffs crops attempted to be raised on said land in 1915 were a failure by reason of the failure of said defendant Delta Company to furnish water for the irrigation thereof; that in consequence of the failure of the crops of the plaintiffs as aforesaid, plaintiffs were unable to meet the payments of interest or principal of aforesaid notes given by plaintiffs to said defendant, as aforesaid; that upon the failure of plaintiffs to meet said payments of interest and principal said defendant demanded that plaintiffs give further security for the payment of aforesaid notes and demanded especially that plaintiffs make and execute to said defendant a

trust deed of all of the East Half (E½) of Section Twenty (20), Township 12 South, Range 14 East, San Bernardino Base and Meridian, California, and demanded further that plaintiffs assign to said defendant a certain note and mortgage for \$12,000.00, made and executed by Joseph Carrick to plaintiffs; that plaintiffs protested the proposed arrangement, and that the said defendant then and there stated to plaintiffs that inasmuch as plaintiff's note for \$13,197.00 secured by mortgage on aforesaid Southeast Quarter of said Section Twenty (20), Township 12 South, Range Fourteen (14) East, San Bernardino Meridian, was then or would shortly be due, and subject to foreclosure, and that inasmuch as there was at that time no considerable demand for land in Imperial County, California, that unless plaintiffs agreed to enter into said proposed arrangement with the defendant, said defendant would by the foreclosure of aforesaid mortgage, get all of the land and securities owned by the plaintiffs; that said defendant further represented to plaintiffs, falsely and fraudulently, that its failure to deliver the necessary water to irrigate the aforesaid Beaver County, Utah, lands was due to the incompetence of said defendant's superintendent, and that there was, and had been, during the season of 1915, a sufficient supply of water for the irrigation of said land, but that the water had been wasted and lost by reason of the incompetence of said superintendent; that defendant further and falsely and fraudulently represented to plaintiffs that there would be a bountiful supply of water thereafter, and said defendant reiterated and

stated as true all of the false and fraudulent statements hereinabove set out in order to induce the plaintiffs to enter into the proposed new agreement with said defendant; that plaintiffs believing said false and fraudulent statements to be true, and believing that said defendant would carry out its threat to foreclose the aforesaid mortgage, and take all of the property of plaintiffs, on or about the 1st day of January, 1916, entered into the following agreement with the said defendant, to wit, the said defendant agreed to cancel all notes and mortgages theretofore executed by plaintiffs to said defendant and to accept as full payment for aforesaid lands in Beaver County, Utah, and for aforesaid water stock, a trust deed of the East Half of aforesaid Section Twenty (20), Township 12 South, Range 14 East, San Bernardino Base and Meridian, in Imperial County, California, securing a note for \$55,000.00, the above mentioned \$10,000.00 note executed by Annie Belford to plaintiffs, together with a note for \$12,000.00 made and executed by Joseph Carrick to plaintiffs, and secured by mortgage on Imperial County land, together with a mortgage upon all of the aforesaid land in Beaver County, Utah, sold by said defendant to plaintiffs; that plaintiffs entered into said arrangement as aforesaid, on or about January 1, 1916, and made and executed to said defendant their promissory note for \$55,000.00, said note being secured by a trust deed to Peoples Abstract & Title Company of El Centro, Imperial County, California, for the use and benefit of said defendant, of the East half of said Section 20; that said \$55,000.00 note was further secured by the assignment by plaintiffs to said

defendant of the aforesaid Annie Belford note and mortgage for \$10,000.00 and by the assignment by plaintiffs to said defendant of the aforesaid Joseph Carrick note and mortgage for \$12,000.00; that said \$55,000.00 note was secured by trust deed of all of the aforesaid Utah lands; that under the terms of the aforesaid agreement, hereinbefore mentioned as having been made and entered into on or about January 1, 1916, the said defendant agreed to advance to plaintiffs certain sums of money for the purpose of financing the farming of said Beaver County lands; that said defendant did, from time to time, advance to plaintiffs sums of money for said purpose, the exact amount of said sums so advanced being to plaintiffs unknown; that plaintiffs would not, nor would either of them, have made or signed or executed or delivered said promissory note for \$55,000.00, or said trust deeds hereinabove set forth, or have assigned said securities hereinabove mentioned as having been assigned by plaintiffs to said defendant, or either of them, or have done any of the things on their part to be done or performed under and by virtue of the terms and conditions of said agreement, if said defendant had not made the false and fraudulent statements and representations in Paragraph VI hereof set forth, and repeated and reiterated said statements and representations as he hereinabove in this Paragraph set forth or if said defendant had not coerced and threatened plaintiffs as aforesaid, or if plaintiffs had not believed and relied upon said representations and statements as true. That after making and entering into aforesaid agreement on

or about January 1, 1916, as aforesaid, and believing and relying upon the aforesaid false and fraudulent statements of said defendant, the plaintiffs did, again attempt to farm, said land and to raise crops thereon in the summer of 1916, but despite the utmost efforts of the plaintiffs said crops were a total failure, due to the failure of said defendant to furnish water for the irrigation thereof; that upon the failure of the crops in 1916, as aforesaid, the said defendant false and fraudulently represented to plaintiffs that the failure to supply water in 1916, was due to defects in the canals and ditches provided for conducting the water to said lands, and that said defects would be immediately corrected by said defendant, and that thereafter there would be no shortage of water and that if plaintiffs would retain possession of said lands and farm the same another year the said defendants would rebate to the plaintiff certain sums of money as compensation to the plaintiffs for the loss of their crops in 1916, by reason of the failure of said defendant to furnish water for the irrigation thereof, as aforesaid and that said defendant reiterated and stated as true all of the false and fraudulent representations hereinabove stated; that plaintiffs believed the statements and representations of said defendant and retained possession of said lands and attempted to farm the same and raise crops thereon during the season of 1917, and that said defendant did rebate to plaintiffs as compensation for the loss of their crops by reason of water shortage in 1916, the sum of about \$1869.00; that the crops attempted to be raised on said land by plain-

tiffs during the season of 1917, were a failure, by reason of the fact that said defendant again failed to provide water for the irrigation thereof, and that on or about August 1, 1917, plaintiffs discovered that all of the statements and representations respecting the water supply and the failure thereof, hereinabove set out as having been made by said defendant to plaintiffs, were false and untrue, and that said defendant had never had, and would never have, a sufficient supply of water for the irrigation of aforesaid lands, and that there had never been and would never be, a sufficient supply of water in said Beaver river for the irrigation thereof.

VIII.

That at all times herein mentioned, and before the execution of the agreement herein before mentioned as having been executed July 10, 1914, said defendant made the statements and representations hereinbefore mentioned as having been made by said defendant to the plaintiffs for the purpose of deceiving, misleading and defrauding the plaintiffs, and of persuading and inducing them to make and enter into contracts hereinbefore mentioned and to make, execute and deliver to said defendant the notes, mortgages, and trust deeds hereinbefore alleged and described, and to assign to said defendant the securities hereinbefore mentioned and described, and particularly for the purpose of inducing plaintiffs to enter into the substitute agreement hereinbefore set forth as having been made and entered into on or about January 1, 1916, and that said defendant, then and

there knew that said representations and statements, and each, and all of them to be, and they then and there were false, fraudulent and misleading; that in truth and in fact, the said defendant then and there well knew said 15,000 acres of land was not then, and never had been, fertile, or the richest type of soil found in the western part of the United States, or rich, or responsive, or loamy soil, or of the best quality, or fertile in every respect, or free from alkali, or free from noxious weeds; but that the same was poor, barren, desert land, of the poorest type and quality found in the western part of the United States, and not fertile in any respect, and was heavily impregnated with black alkali, and heavily seeded to Russian thistle; that said soil was not, nor was any of it, suitable for, or adapted to, growing, and there could not be grown thereon large crops of alfalfa, or wheat, or oats, or barley, or potatoes or sugar beets, or asparagus, or celery, or onions, or apples, or pears, or plums, or cherries, or any other small or large fruits, or all, or any kind, or kinds, of garden truck; that none or any of said products could be raised profitably on said 15,000 acres, or on said parcel in Paragraph VII hereof described, but only poor crops of any of said products could be raised thereon, and then at an expense of money and labor greatly in excess of the market value of the crops; that the quantity of black alkali in said land is detrimental to the growing of any of the crops and requires quantities of water greatly in excess of one fifteen thousandth of each acre thereof; that said valley did not, and does not, pos-

sess, and in the memory of man has never possessed, a long or even growing season, or warm open winters, or a climate that produces or that had produced, bumper crops, but that said valley has, and for many years has had, a growing season of a yearly average of less than three months, with heavy frosts which destroy crops as late as the 22nd of June, and early frosts which terminate the growing season as early as the 9th of September, and frosts which prevent the planting of crops and which destroy the same when planted, as a usual, regular and yearly phenomenon of climate in said valley; in the months of June and September; that crops of any of the aforesaid products that pay or have paid, more than the cost, or as much as the cost of planting and harvesting them, are not, and have not been, obtained in said valley more than once in every seven years; that said defendant had not sold, and did not intend, and never intended, to sell the stock of said Irrigation Company only with, and in conjunction with, an acre of said land, but that they had intended to sell, and had sold, and did sell more than two hundred shares of said stock separate and apart from any sale of said land, to be used with, and appurtenant to, land outside of said 15,000 acre tract that the dam and reservoir and distributing system in Paragraph V above described, was not, and was not intended to be, a million dollar system, and the construction thereof had not, and did not cost one million dollars, but on the contrary the value and cost of construction of said system was not more than \$325,000; that the said dam did not have, and was not intended

to have, a cement core running across and through it to bed rock, nor does said dam possess any cement core which extends through more than one-third of said dam or which runs to, or touches, bed rock at all; that said Irrigation Company did not then own, or was it entitled to, the use of all of the flow of water in said Beaver River, except the quantities to which the town of Minersville was represented by said defendant to be entitled, as in Paragraph VI hereof set forth; but the rights of said Irrigation Company in and to the flow of water in said Beaver River, were also subject to the rights of a certain district known as the Beaver Bottoms, lying below said town of Milford, and adjacent to said Beaver River to more than 600 acre feet of water annually from said Beaver River; and that said district known as the Beaver Bottoms at all times herein mentioned, had, and now has, a perpetual right to at least 600 acre feet of water annually from said Beaver River at a point below said town of Milford in said Milford Valley; and that the flow of water in said Beaver River had not been, and would not be, inexhaustible, but that the same had been, and was variable, and not sufficient in quantity each and every year to irrigate 300 acres of land of the kind and quality available in said Milford Valley or of the kind and quality of aforesaid 15,000 acre tract for the purpose of raising crops thereon; and that the flow of water in said river, exclusive of the quantities owned and controlled by said town of Minersville, as aforesaid, has not for the past eight years exceeded 40,000 acre feet, and that it has during said

period varied from 16,400 acre feet per annum to not exceed 40,000 acre feet per annum; and that the amount of said water owned and controlled by said Irrigation Company would not be, and was not, sufficient to furnish all necessary water for irrigating said 15,000 acres for the growing of the aforesaid crops thereon, and that it had not furnished, and it would not furnish, an average each and every year, or a supply in any year of 3 acre feet per acre for each and every acre of said 15,000 acre tract, but that the said supply of water would not be, and had not in any year been, sufficient to supply two acre feet of water on said land; that the average yearly supply of said water owned and controlled by said Irrigation Company had been, and was, on and before said July 10, 1914, less than two acre feet per acre for said 15,000 acre tract; and that a record and survey of the flow of water in said Beaver River at said town of Minersville Beaver County, Utah, had not been made or kept by the United States Government, or by any one, for each year during the fourteen years preceding July 10, 1914, and that no record, or survey, or measurement had been made by the United States Government except for the years 1909, 1910, 1911, 1912, 1913 and 1914, and said record did not show, nor had there ever been, an average flow of water in said river sufficient to fully or at all irrigate 45,000 acres of such land as that in the above described 15,000 acre tract for the raising thereon of any crops whatsoever each and every year, or any year; but the fact is that there was, and that a record kept by the United States Government showed,

that at a point north of, and below the point of diversion of water at Minersville, as aforesaid during the year ending December 31, 1909, a total of 39,200 acre feet, and no more, and during the year ending December 31, 1910, a total of 19,700 acre feet, and no more, and during the year ending December 31, 1911, a total of 19,000 acre feet, and no more, and during the year ending December 31, 1912, a total of 29,200 acre feet, and no more, and during the year ending December 31, 1913, a total of 14,400 acre feet and no more, and during the year ending December 31, 1914, a total of 38,200 acre feet, and no more; and that the cost of maintaining such water system was, and is, in excess of thirty cents per acre per year to the purchasers of parcels in said 15,000 acre tract, and that the said defendant did not intend to sell, and they had not, and have not sold, or kept for sale, the whole of said 15,000 acre tract of land, together with one share of stock in said Irrigation Company for each acre of said land, nor have they devoted said irrigation system to the development of said tract; but that said defendant has sold portions of said water rights in excess of 200 acre feet per year for use on other lands than said 15,000 acre tract; and that neither the soil in said 15,000 acre tract, nor the soil in the parcel thereof described in paragraph VII hereof, was then or ever had been, especially, or at all, adapted to the growing of alfalfa, but that the same could not be planted to alfalfa and made to produce paying quantities of the same in less than five years, or without intensive cultivation by plowing and planting said alfalfa, and plowing the

growth of same under the soil and reseeded the ground and thus replowing and reseeded the ground for at least five years; and that there was not a ready market, or any market, for alfalfa, close to said land, or in said Milford Valley; and that the land in said 15,000 acre tract, and in the parcel thereof in paragraph VII hereof described, was not, on the said July 10, 1914, and never had been, and is not now of the reasonable value, or market value of \$30.00 per acre, or any sum more than fifty cents per acre; and that said stock of said Irrigation Company was not on said July 10, 1914, and never had been, and is not now, of the reasonable or market value of \$70.00 per share, or any other sum more than \$1.00 per share and that the cost to clear, plow, level and make ready for seeding all, or any part, of the land above referred to, and described in Paragraph VII hereof, was not then, and would not be, not to exceed \$6.00 per acre, but that said cost was then, and would continue to be, at least \$20.00 per acre.

IX.

That the plaintiffs did not know the true facts as herein set forth, or discover the fraud and misrepresentations of the said defendant herein set out, and that they could not, and were not with due diligence able to discover the same until on or about the 10th day of August, 1917, and that on or about the 2nd day of October, 1917, plaintiffs rescinded all purchasers and contracts with said defendant hereinbefore set out and served said defendant with notice of said rescission and tendered to said defendant a quitclaim deed duly executed and acknowledged by plaintiffs reconveying

to said Delta Company all the right, title and interest of said plaintiffs in and to the land on Milford Valley, Beaver County, Utah, which was purchased by plaintiffs from said defendant as set forth and described herein, and tendered and offered to return to said defendant everything of value received from said defendant and that plaintiffs are ready, and do now offer to restore to said defendant everything of value received from said defendant in said purchase, or for or on account of said contracts, and otherwise to do any and all things this Court shall direct in the premises.

X.

That applicants WILLIAM MARTIN BELFORD and ANNIE MARIE BELFORD are husband and wife; that their occupations are farmer and housewife, respectively; that their ages are fifty-one years and forty years, respectively; that their post office address is Highline, California; that their residence is on the following described land for which registration of title is prayed:

Lots Eight (8) and Ten (10), the Southwest Quarter (SW $\frac{1}{4}$) of the Northeast Quarter (NE $\frac{1}{4}$) and the Southeast Quarter (S.E. $\frac{1}{4}$) of the Northwest quarter (NW $\frac{1}{4}$) of Section Three (3) in Township Fourteen (14) South, Range Sixteen (16) East, San Bernardino Meridian, California, according to plat of United States survey approved November 4, 1908, map on file in the office of the County Recorder; assessed valuation \$4910.00.

That applicants claim an estate in fee simple in said land, as their community property; that as re-

gards improvements and occupancy by applicants and their predecessors in interest during the five years last past, said land has been improved by levelling, irrigating, cultivation, and by the erection of building and is now occupied by applicants.

That the names and post office addresses of the owners of adjoining lands are:

Ray E. Priest, Highline, California, Thomas A. Robins, Brawley, California; Lewis E. Jordan, Lamanda Park, California, Olive V. Mills, Goldroad, Arizona; Albert Crawford, Claremont, California; Peter Molloy, Virginia City, Nevada.

That said land is subject to:

Right of way for mains, laterals, waste canals, telephone lines and other structures, in favor of Imperial Water Company No. 5, a corporation, of Holtville, California, unrecorded.

That the Delta Land and Water Company, a corporation of Milford, Utah, claims some right, title or interest in and to said land by virtue of the assignments to them of a certain mortgage said assignments being recorded in Book 3 of Assignments of Mortgages at page 180; in book 4; of Assignments of Mortgages at page 128; that all of the claims of said Delta Land and Water Company are without right, and void, and that said mortgage, together with the debt thereby secured, has been fully paid, satisfied and discharged.

Applicants William Martin Belford and Annie Marie Belford allege that the claims of aforesaid Delta Land & Water Company are without right, and void,

STATE OF CALIFORNIA,)
) ss.
 COUNTY OF IMPERIAL.)

Lettie Mary Austin, being first duly sworn, deposes and says, that she is one of the petitioners in the foregoing petition for land registration; that she has read the within petition, and knows the contents thereof; that the same is true of her own knowledge except as to the matters therein stated on information and belief and that as to those matters she believes it to be true.

Lettie Mary Austin

Subscribed and sworn to before me this 2nd day of October, 1917.

David E. Doke.

Notary Public in and for the county of Imperial, state of California.

My commission expires Feb. 20, 1921.

(Notarial Seal)

STATE OF CALIFORNIA,)
) ss.
 COUNTY OF IMPERIAL.)

WILLIAM MARTIN BELFORD and ANNIE MARIE BELFORD, being first duly sworn, depose and say: That they are two of the petitioners in the foregoing petition for land registration; that they have read the within petition in so far as it relates to affiants' own petition and know the contents thereof; that the same is true of their own knowledge except as to the matters therein stated on information and belief and that as to those matters they believe it to be true.

Annie Marie Belford

William Martin Belford.

Subscribed and sworn to before me this 28th day of September, 1917.

T. F. Parmalee.

Notary Public in and for the county of Imperial,
state of California.

(Notarial Seal)

That the aforesaid petition is hereinafter referred to in this Bill in Equity as the Proceeding to Register Title.

12. That thereafter and on the second day of October, 1917, a notice of application for registration of title to the land described in the above entitled petition was issued by the superior court of the state of California, in and for said county of Imperial, which said notice was in words and figures as follows, to wit:

NOTICE OF APPLICATION FOR REGISTRATION OF TITLE TO LAND IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA IN AND FOR THE COUNTY OF IMPERIAL.

In the matter of the application of Friend James Austin, Lettie Mary Austin, William Martin Belford and Annie Marie Belford, petitioners, vs. County of Imperial, a body politic, Inter-California Railway Company, a corporation, Ira Aten, Title Insurance and Trust Company, a corporation, C. I. Whitesell, Imperial Water Company No. 3, a corporation, Peoples Abstract and Title Company, a corporation, The Pacific Mutual Life Insurance Company of California, a corporation, Stephen A. Shepp, Victor W. Bailey,

Delta Land and Water Company, a corporation, Lily G. Uzell, Ray E. Priest, Thomas A. Robins, Lewis E. Jordan, Olive V. Mills, Albert Crawford, Peter Molley, Imperial Water Company No. 5, a corporation, Imperial Irrigation District, a corporation, and all other persons, known and unknown, whom it may concern or who claim any right, title, interest, estate, or lien in the real property described in the petition in this action, adverse to the plaintiffs' ownership, defendants.

The People of the State of California, to the above named defendants, and to all persons who have or claim to have any interest in or lien upon the land described herein, and to all whom it may concern, Greeting:

Take notice that on the 2nd day of October, 1917, the verified petition of the above named petitioners was filed in the office of the Clerk of the Superior Court of the County of Imperial, praying for a decree directing the registration of title to the following described real property located and situated in the County of Imperial, State of California, as described in said petition, to wit:

Application No. 1:—Owned by Friend James Austin and Lettie Mary Austin. All of the East Half ($E\frac{1}{2}$) of Section 20, T. 12 S. R. 14 E., S. B. M., except a strip 100 feet wide therethrough owned by the Inter-California Railway Company and more particularly described in deed recorded in Book 117 of Deeds, at Page 86, Imperial County Records; and the $SW\frac{1}{4}$ of Section 4, T. 12 S. R., 15 E., S. B. M.

Application No. 2:—Owned by William Martin Belford and Annie Marie Belford. Lots 8 and 10, the SW $\frac{1}{4}$ of the NE $\frac{1}{4}$ and the SE $\frac{1}{4}$ of the NW $\frac{1}{4}$ of Section 3, T. 14 S. R. 16 E., S. B. M.

Said petition prays for a decree declaring the petitioners herein to be the owners in fee of said real property as described in said petition, and that certificates of title to said real property be issued to petitioners in accordance with the provisions of the Act adopted by the People of the State of California, on November 3, 1914, entitled "An Act to Amend an Act Entitled 'An Act for the Certification of Land Titles and the Simplification of the Transfer of Real Estate', Approved March 17, 1897."

You are, therefore, hereby notified to appear and answer said petition within ten days after personal service of this notice upon you, if served within the County of Imperial, or within thirty days after personal service of this notice upon you, if served elsewhere in the State of California, or within sixty days after the first publication of this notice, if it has not been personally served upon you in said State, and to show cause by your answer why said petition should not be granted, and if you fail to so appear and answer as aforesaid, and to show cause, if any you have, why said petition should not be granted, the Court will grant said petition, and will order the registration of title to said lands, in accordance with the provisions of said law, and you will be forever barred from disputing the same.

WITNESS, the Honorable Franklin J. Cole, Judge of the Superior Court of the State of California, in and for the County of Imperial, this 2nd day of October, 1917.

Given under my hand and seal of the said Superior Court of the County of Imperial, State of California, this 2nd day of October, 1917.

M. S. Cook, Clerk

By F. E. Cooper, Deputy Clerk.

(Superior Court Seal)

Good cause appearing therefor, it is hereby ordered that the above entitled notice be published in the "Imperial Valley Press" a daily newspaper of general circulation, published and circulated in the County of Imperial, State of California, once a week for four successive weeks; that the form and substance of said Notice is hereby approved.

Dated this 2nd day of October, 1917.

FRANKLIN J. COLE

Judge of the Superior Court.

Endorsed:

"Filed OCT 3 1917

M. S. COOK, County Clerk

By C. E. Williford, Deputy".

13. That the defendants Friend J. Austin and Lettie M. Austin did on the second day of October, 1917, with intent and design to cheat and defraud the plaintiff, as aforesaid, and as a part of their fraudulent scheme to mislead the plaintiff and to prevent it from obtaining any knowledge or information as to the

institution or pendency of the aforesaid action to register title, did file in the superior court of the county of Imperial, state of California, an action entitled, "Friend J. Austin and Lettie M. Austin, plaintiffs, v. Delta Land & Water Company, a corporation, Western Securities Company, a corporation, Frances Investment Company, a corporation, W. I. Moody, Lloyd Sigler, George A. Snow, John Doe and Richard Roe, defendants", being action No. 4007, records of said court, wherein the plaintiffs prayed that the contract entered into between them and the Delta Land & Water Company for the purchase of certain lands in Utah be rescinded and held for naught, and that the aforesaid promissory note and deed of trust given by the defendants Friend J. Austin and Lettie M. Austin of date January 1, 1916, be cancelled and held for naught; that the aforesaid note and mortgage of the defendant Annie Marie Belford be returned to the said Friend J. Austin and Lettie M. Austin, or be cancelled and held for naught, and that the said note and mortgage of the said Joseph Carrick of date March 3, 1915, be returned to the said Friend J. Austin and Lettie M. Austin or be cancelled and held for naught; and as further relief prayed that the title to the land described in the aforesaid trust deed and mortgage of Friend J. Austin and Lettie M. Austin of date January 1, 1916, be registered in the name of the said Friend J. Austin and Lettie M. Austin under the provisions of that certain law enacted by the people of the state of California, adopted and passed at the general election held on November 3, 1914, entitled, "An Act to Amend an Act entitled 'An Act for the Certification of Land

Titles and the Simplification of the Transfer of Real Estate,' Approved March 1897".

That no personal service of summons in said action was ever made within the state of California upon either this plaintiff or said Delta Land & Water Company, but that the said Friend J. Austin and Lettie M. Austin well knowing or believing that the Delta Land & Water Company and the plaintiff herein, being non-resident corporations, would not appear in said action unless due and proper substituted service were made upon them in the manner provided by the Code of Civil Procedure of the state of California, also as a part of their plan to deceive and mislead the said Delta Land & Water Company and the plaintiff, failed and refrained from filing any affidavits in said action requesting that service by publication upon said defendants be authorized, and procured no order of the said superior court of the county of Imperial in said cause, ordering or directing service by publication of summons upon any of the defendants named in said action, and thereafter and on or about the first day of November, 1917, in furtherance of their scheme and plan to deceive and mislead the plaintiff, caused to be deposited in the postoffice at El Centro, county of Imperial, California, a copy of said complaint and summons last referred to, addressed to the Delta Land & Water Company at Milford, Utah, which said copies were received by the said Delta Land & Water Company in due course of the United States mail, on or about the 3rd day of November, 1917, and also on or about the first day of November, 1917, in furtherance of their plan and scheme to deceive and mislead the plaintiff, caused to

be served upon one Mima Stringer, a clerk in the office of the Delta Land & Water Company, at the town of Milford, state of Utah, by one H. Fred Scott, a copy of the aforesaid complaint and summons in the action last referred to.

That at or about the time the summons and complaint were delivered to said Mima Stringer at Milford, Utah, by H. Fred Scott, as aforesaid, the Delta Land & Water Company and the plaintiff, through their attorney, made due inquiry to ascertain if service by publication had been ordered by the court in said action, and upon learning that no affidavit or order therefor had been made, did not appear in said action.

14. That thereafter, on the 26th day of November, 1917, The Peoples Abstract & Title Company, defendant herein, was duly served with a copy of the aforesaid petition and notice in the Action to Register Title hereinbefore set forth in paragraph 11, as trustee under the aforesaid trust deed of date January 1, 1916. Plaintiff is informed and believes, and upon such information and belief alleges, that the defendant The Peoples Abstract & Title Company, fraudulently colluded with the defendants Friend J. Austin and Lettie M. Austin, and with secret intent and design not to appear in the said action to protect the interests of its beneficiary under said trust deed of January 1, 1916, or to make any defense to the aforesaid action, failed and neglected to notify or inform the plaintiff or the Delta Land & Water Company at any time or at all of the institution or pendency of the aforesaid action to register title, or of the service

upon it, The Peoples Abstract & Title Company, of the aforesaid petition and notice, or of its intention and design not to appear in said action or to make any defense thereto, or to protect the rights of the beneficiary under said trust deed of January 1, 1916, although the said defendant had theretofore and on the 4th day of April, 1917, informed the plaintiff and the Delta Land & Water Company that it was its custom and practice in all cases to take whatever steps were necessary to protect the interests of the beneficiary under any trust deed in which it, the said defendant, was trustee, and at said time represented to and assured the plaintiff and the Delta Land & Water Company that it would at all times protect the interests of the beneficiary under the said trust deed of date January 1, 1916, hereinbefore set forth. Plaintiff alleges that the plaintiff and the Delta Land & Water Company did at all times thereafter rely upon the said representations and assurances of the said defendant, The Peoples Abstract & Title Company, that it would at all times protect the beneficiary under said trust deed of January 1, 1916, and that it would take whatever steps were necessary in any case to protect the interests of said beneficiary and advise them of the pendency of any proceedings affecting their interests under said trust deed. Plaintiff is informed and believes and upon such information and belief alleges that the defendant The Peoples Abstract & Title Company did, through fraudulent collusion with the defendants Friend J. Austin and Lettie M. Austin, and in disregard of the promises and as-

surances made by it to the plaintiff, as hereinbefore set forth, and in disregard of its duties and obligations towards its beneficiary as trustee under said trust deed of January 1, 1916, deliberately and intentionally fail and neglect to appear in the said action to register title or to notify plaintiff of the pendency thereof, or to make any defense thereto, or to take any steps to protect the interests of the beneficiary under said trust deed, and permitted a default to be entered against it in said action on the 10th day of December, 1917.

15. That on or about the 3rd day of November, 1917, the defendants Friend J. Austin, Lettie M. Austin, Annie Marie Belford and William Martin Belford, with intent and design to injure and defraud the Delta Land & Water Company, and the plaintiff, and to deceive and mislead said superior court of Imperial County, California, did procure and file with the clerk of said court in the above entitled proceeding to register title, an affidavit of one M. J. Davis in words and figures as follows, to wit:

STATE OF CALIFORNIA,)
) ss.
 COUNTY OF IMPERIAL.)

M. J. Davis, being first duly sworn, deposes and says: That she is a citizen of the United States, over the age of eighteen years, and not a party to the proceeding known as numbered in the records and files of the Clerk of the County of Imperial, State of California, as L. R. No. 7, a copy of the petition and notice in which matter are hereto attached; that affiant did on No-

vember 1st, 1917, deposit in the post office at El Centro, California, postage prepaid, in a sealed envelope addressed to the Delta Land and Water Company, Milford, Utah, a copy of the attached petition and notice; that affiant did on October 3rd, 1917, deposit in the post office at El Centro, California, postage prepaid, in sealed envelopes, copies of the attached notices addressed to the following persons, at the addresses following: Olive V. Mills, at Goldroad, Arizona; Peter Molloy, at Virginia City, Nevada.

M. J. Davis

SUBSCRIBED AND SWORN TO BEFORE ME
this 1st day of November, 1917.

L. P. Sargent.

Notary Public in and for the County of Imperial, State
of California.

(Notarial seal)

That the statement contained in said affidavit that "affiant did on November 1, 1917, deposit in the post-office at El Centro, California, postage prepaid, in a sealed envelope, addressed to the Delta Land & Water Company, Milford, Utah, a copy of the within petition and notice" was, and is, untrue, false and fraudulent, in that neither a copy of the said petition or of the said notice referred to in said affidavit was, on the date set forth in said affidavit, or at any other time or at all, deposited in the postoffice at El Centro, California, or at any other place or at all, addressed to the Delta Land & Water Company, or to the plaintiff herein, the sole and only notice or instrument which was mailed

to said Delta Land and Water Company by said affiant on the first day of November, 1917, or at any other time, being the summons and complaint in said Civil Action wherein the said Friend J. Austin and Lettie M. Austin were plaintiffs and Delta Land and Water Company et al. were defendants, as aforesaid; that the Delta Land & Water Company did not, nor did the plaintiff, at any time, receive through the mail, or otherwise, a copy of said petition and notice, or any notice of the institution and pendency of said action to register title.

16. That on or about the 3rd day of November, 1917, the defendants Friend J. Austin, Lettie M. Austin, Annie Marie Belford and William Martin Belford, also with intent and design to defraud the plaintiff and the Delta Land & Water Company, and to deceive and mislead said Superior Court also, procured and caused to be filed with the clerk of the superior court of the county of Imperial, state of California, in the above entitled proceeding to register title, a purported return of service in words and figures as follows, to wit:

STATE OF UTAH,)
) ss.
COUNTY OF BEAVER.)

H. Fred Scott being duly sworn, deposes and says: That he is, and was at the times of the service of the papers herein referred to, a citizen of the United States, and over the age of eighteen years; that he personally served a copy of the attached Notice and petition on the hereinafter named parties, by delivering to and

Martin Belford, pursuant to, and as a part of, their scheme to defraud and injure the plaintiff and the Delta Land & Water Company, and to deceive the court, through their attorney, M. J. Davis, did present to the Hon. Franklin J. Cole, Judge of said superior court, the foregoing false and fraudulent affidavit of M. J. Davis, and the foregoing false and fraudulent return of service of H. Fred Scott, and did by means of said false and fraudulent affidavit and said false and fraudulent return of service, procure from said Judge of said superior court an order to enter the default of the Delta Land & Water Company in the aforesaid action to register title, which said order is in words and figures as follows, to wit:

IN THE SUPERIOR COURT OF THE STATE OF
CALIFORNIA, IN AND FOR THE COUNTY
OF IMPERIAL.

IN THE MATTER OF)	
THE APPLICATION OF)	
FRIEND JAMES AUS-	) ORDER TO ENTER
TIN ET AL, FOR INI-		DEFULT
TIAL REGISTRATION )	) After Publication of
OF TITLE OF LAND. )		Notice.

It appearing to the Court, from the papers, records and files in this action, that the petition herein was duly filed, and that on the 2nd day of October, 1917,

notice was ordered published and it appearing to the Court that said notice was published as ordered or that the same has been duly served upon the defendants Lily G. Uzzell, Delta Land & Water Company, a corporation, Olive V. Mills, Peter Molloy and Albert Crawford, in the manner required by law and that said defendants have not, nor have any of them, within the time allowed by law, or at all, appeared or defended, and do not now appear or defend, the default of said defendants is hereby ordered entered.

The Clerk will make the necessary record of entry of default.

Franklin J. Cole.

Judge.

Endorsed:

Filed Dec 4 1917.

M. S. Cook, County Clerk

By E. B. Wilson, Deputy

atv 9:15 A. M.

And did thereafter, on the 7th day of December, 1917, procure from said court a decree, signed by the Judge thereof, in the above entitled application for registration of title, which decree was in words and figures as follows, to wit:

IN THE SUPERIOR COURT OF THE STATE OF
CALIFORNIA, IN AND FOR THE COUNTY
OF IMPERIAL.

IN THE MATTER OF)	
THE APPLICATION OF)	
FRIEND JAMES AUS-	
TIN, LETTIE MARY)	
AUSTIN, WILLIAM)	
MARTIN BELFORD)	L. R. No. 7
AND ANNIE MARIE)	FINDINGS OF FACT
BELFORD, FOR INI-	AND DECREE.
TIAL REGISTRATION)	
OF TITLE TO LAND.)	

The petition in the above entitled matter having been filed at 4:47 P. M., October 2, 1917, came on regularly for hearing on the 7th day of December, 1917, and was continued to the 13th day of December, 1917, before this Court, upon the verified petition and application of the above named petitioners, and the answers and stipulations of defendants, H. F. Davis, acting as counsel for the said petitioners and no one appearing for defendants, and after a full consideration thereof, and upon the proofs, exhibits and testimony of the petitioners and witnesses the Court finds and decrees:

That notice of the filing of the petition of above-named applicants was duly published in the "Imperial Valley Press", a daily newspaper of general circulation, published in the City of El Centro, County of Imperial, State of California, as heretofore designated and ordered by this Court, once a week for four successive weeks, beginning October 3, 1917.

That all persons, known and unknown, interested in the land described in the petition herein have either assented in writing to the registration of title to said lands or have been duly and properly served with notice of the filing of the petition, and with a copy of said petition in all cases where required by law, proof of which has been duly filed; that the time of all persons to enter an appearance herein has expired and that all such persons, known and unknown, are properly before the Court,

That no one, other than County of Imperial, a corporation, Imperial Irrigation District, a corporation, Imperial Water Company No. 3, a corporation, and The Pacific Mutual Life Insurance Company of California, a corporation, has appeared, and that the default of all such other persons has heretofore been entered, and as to them the allegations of the petition are taken as confessed and true.

That it appears from the evidence, both oral and written, and from an examination of the papers on file in this matter, that the facts alleged in said petition and application are true, and they are hereby declared to be true; that the Court has in this matter,

jurisdiction over all persons, known and unknown, as well as over the lands described in said petition.

That the petitioners, either by themselves or by themselves and their predecessors in interest, have been in the actual, exclusive and adverse possession of the lands described in said petition as belonging to them, continuously for more than five years next preceding the filing of said petition, claiming as of right against the world, to own the same in fee simple, and that they have paid all taxes and assessments, of every kind, legally levied or assessed against said land during said five year period.

That each of the petitioners herein is over the age of twenty-one years and free from any legal disability.

That petitioners William Belford and Annie Marie Belford have, since the filing of the petition herein, sold and conveyed to petitioners Friend James Austin and Lettie Mary Austin all of their right, title and interest in and to the land in said petition described as belonging to said William Martin Belford and Annie Marie Belford, and that Friend James Austin and Lettie Mary Austin have been, by proper order, substituted herein in the place and stead of said William Martin Belford and Annie Marie Belford.

The Court further specifically finds and decrees:

That Petitioner Friend James Austin, aged sixty-years, and petitioner Lettie Mary Austin, aged fifty-five years, are husband and wife; that they are by occupation farmer and housewife, respectively; that petitioners' residence and post office address is Calipatria, California; that said petitioners are the owners,

in fee simple, of the following described separate parcel of land, to wit:

All of the East Half ($E\frac{1}{2}$) of Section Twenty (20), in Township Twelve (12) South, Range Fourteen (14) East, San Bernardino Meridian, California, according to the United States re-survey of said land officially approved by the Surveyor-General February 8th, 1916, except a strip one hundred (100) feet wide there-through owned by the Inter-California Railway Company, and more particularly described in deed recorded in Book 117, of Deeds, at page 86, Imperial County Records.

That a map of said land, on which the same can be identified by reference, is on file in the office of the County Recorder of Imperial County.

That said land is the community property of said petitioners.

That the value of the said land, together with the permanent improvements thereon, as assessed at the last assessment for County taxation, next preceding the filing of the petition herein, was \$10,700.00.

That said land and the owners' estate therein is subject to the following particular estates, mortgages, easements, liens, attachments, charges or encumbrance, in relative priority, and to none other:

1. A right of way for an irrigation system and telephone lines over any part of said land, in favor of Imperial Water Company No. 3, a corporation, of Calipatria, California; recorded in book 91, page 222 of deeds, Imperial County records.

2. A mortgage of the North Half ($N\frac{1}{2}$) of said land, being the Northeast Quarter ($NE\frac{1}{4}$) of said

Section Twenty (20), dated February 16, 1915, recorded in Book 35, page 57 of Mortgages, Imperial County Records, given to secure the payment to The Pacific Mutual Life Insurance Company of California, a corporation, of Los Angeles, California, of a promissory note of even date for Six Thousand (\$6000.00) Dollars, payable five years after date, with interest at eight per cent per annum, payable semi-annually.

3. A right of way for a road over the Easterly Thirty (30) feet and the Northerly Thirty (30) feet of said land, in favor of Imperial County; unrecorded.

That petitioners Friend James Austin and Lettie Mary Austin are also the owners of the following described separate parcel of land, in the same manner and right:—

The Southwest Quarter (SW $\frac{1}{4}$) of Section Four (4), in Township Twelve (12) South, Range Fifteen (15) East, San Bernardino Meridian, California, according to the United States re-survey of said land officially approved by the Surveyor-General February 8th, 1916.

That a map of said land, on which the same can be identified by reference, is on file in the office of the County Recorder of Imperial County.

That said land is the community property of said petitioners.

That the value of the said land, together with the permanent improvement thereon, as assessed at the last assessment for County taxation, next preceding the filing of the petition herein, was \$5000.00.

That said land and the owners' estate therein is subject to the following particular estates, mortgages, assessments, liens, attachments, charges or encumbrances, in relative priority, and to none other:—

1. A right of way for ditches, canals and telephone lines over any part of said land, in favor of Imperial Water Company No. 3, a corporation, of Calipatria, California; recorded in Book 89 of Deeds, at page 11, Imperial County records.

2. An unrecorded lease, in favor of Stephen A. Shepp, of Calipatria, California, which expires January 1, 1919.

That Petitioners Friend James Austin and Lettie Mary Austin are also the owners of the following described separate parcel of land, in the same manner and rights:—

Lots Eight (8) and Ten (10), the Southwest quarter ($SW\frac{1}{4}$) of the Northeast Quarter ($NE\frac{1}{4}$) and the Southeast Quarter ($SE\frac{1}{4}$) of the Northwest Quarter ($NW\frac{1}{4}$), of Section Three (3), in Township Fourteen (14) South, Range Sixteen (16) East, San Bernardino Meridian, California, according to the United States re-survey of said land officially approved by the Surveyor-General November 4, 1908.

That a map of said land, on which the same can be identified by reference, is on file in the office of the County Recorder of Imperial County.

That said land is the community property of said petitioners.

That the value of said land, together with the permanent improvements thereon, as assessed at the last

assessment for County taxation, next preceding the filing of the petition herein, was \$4910.00.

That said land the owners' estate therein is subject to the following particular estates, mortgages, easements, liens, attachments, charges and encumbrances, in relative priority, and to none other:—

Right of way for mains, laterals, waste canals, telephone lines and other structures, in favor of Imperial Water Company No. 6, a corporation, of Holtville, California; unrecorded.

IT IS THEREFORE adjudged and decreed that the title of the petitioners to the land be confirmed and registered, and it is ordered that the Registrar, upon a certified copy of this decree being filed with him, issue certificates of title as provided by law, to the petitioners herein mentioned for the land found to belong to them. That all of said lands are hereby brought under the operation of said act and registered according to said Act. And this decree shall, as provided in said Act, forever quiet the title to the land herein ordered registered and be final and conclusive as against the rights of all persons, known and unknown, to assert any estate, interest, claim, lien or demand, of any kind or nature whatsoever, against said land or any part thereof, except only as herein found and as in the Act provided.

DONE IN OPEN COURT, this 7th day of December, 1917.

FRANKLIN J. COLE
Judge of the Superior Court.

O. K.

Frank Erzinger, Registrar.

Endorsed:

“FILED DEC 13, 1917
M. S. COOK, County Clerk
By F. E. Cooper, Deputy.’

‘Entered Dec. 13, 1917, at 5 P. M.
Book 5, page 83, Judgments.’”

That thereafter and on the 13th day of December, 1917, the said decree was entered and recorded in book 5, page 83, of Judgments, records of Imperial county, state of California, and on, to wit, the 20th day of December, 1917, the defendants Friend J. Austin and Lettie M. Austin caused a dismissal to be entered of record of the aforesaid civil action No. 4007, mentioned in Paragraph 13 hereof.

That at the time of the entry of said order of default and of the entry of said decree and judgment, neither the Delta Land & Water Company or this plaintiff had been served with a copy of the petition or notice in the aforesaid action to register title, and had not appeared in said proceedings in any manner whatsoever, and that the said court had no jurisdiction of this plaintiff or of the Delta Land & Water Company, and was wholly without jurisdiction to hear or determine any of the rights of this plaintiff, or of its assignor, the Delta Land & Water Company, in the premises described in the said trust deed of date January 1, 1916, and was wholly without jurisdiction to enter its decree as against the said Delta Land & Water Company or this plaintiff, as hereinbefore set forth.

18. That subsequent to the second day of October, 1917, and prior to the 13th day of December, 1917, the

defendants William Martin Belford and Annie Marie Belford sold, transferred and conveyed by instrument of conveyance to the defendants Friend J. Austin and Lettie M. Austin all of their right, title and interest in and to the property described in the aforesaid mortgage of Annie Marie Belford of date June 20, 1914, and that the said defendants Friend J. Austin and Lettie M. Austin are now the owners of the legal fee to said property.

19. That the plaintiff herein and the said Delta Land & Water Company, and each of them, have now, and did have during all of the times herein mentioned, a good, sufficient and meritorious defense to the aforesaid action to register title brought by the defendants Friend J. Austin, Lettie M. Austin, Annie Marie Belford and William Martin Belford, hereinbefore set forth, in so far as the same sought to invalidate or injuriously affect the rights and interests of the beneficiary under said trust deed of January 1, 1916, and the rights and interests of the holder of the aforesaid note and mortgage of Annie Marie Belford of date June 20, 1914. That the plaintiff was a bona fide purchaser for value before maturity of the aforesaid note of the defendants Friend J. Austin and Lettie M. Austin of date January 1, 1916, and of the aforesaid promissory note of Annie Marie Belford and the mortgage securing same of date June 20, 1914. That each and every one of the allegations contained in said application to register title as to false and fraudulent statements and representations alleged to have been made by the Delta Land & Water Company, its agents, serv-

ants or employees, to the defendants Friend J. Austin and Lettie M. Austin, or either of them, is false and untrue.

20. That neither the plaintiff nor the Delta Land & Water Company had any knowledge or information of the institution or pendency of the aforesaid action to register title, or of any of the proceedings had or taken therein as hereinbefore set forth prior to on or about the 28th day of December, 1917.

21. That the defendants Friend J. Austin and Lettie M. Austin are now in possession and control of the premises described in their trust deed and mortgage of date January 1, 1916, and are collecting and converting to their own use and benefit the rents, issues and profits derived therefrom. That unless a receiver is appointed by the court to take charge of the said property described in said trust deed of date January 1, 1916, and to collect and conserve the rents, issues and profits thereof, the same will be wasted and dissipated, to the injury of the plaintiff.

WHEREFORE plaintiff prays:

(a) For judgment against the defendants Friend J. Austin and Lettie M. Austin for the sum of \$55,000.00, United States gold coin, with interest thereon at the rate of six per cent per annum from January 1, 1916, to date.

(b) For judgment against the defendant Annie Marie Belford for the sum of \$10,000.00, United States gold coin, with interest thereon at the rate of eight per cent per annum from July 20, 1917, to date.

(c) That the judgment and decree of the superior

court of the county of Imperial, state of California, made in that certain action L. R. No. 7, and entitled, "In the Matter of the Application of Friend James Austin, Lettie Mary Austin, Annie Marie Belford and William Martin Belford, for initial registry of title to land," and entered on December 13, 1917, in book 5, page 83, of Judgments, records of Imperial county, California, be vacated and set aside and declared null and void and of no force and effect, in so far as the same affects the equitable rights and interests of the plaintiff in the property hereinbefore described under that certain trust deed executed by the defendants Friend J. Austin and Lettie M. Austin on January 1, 1916, and under that certain mortgage of the defendant Annie Marie Belford of date June 20, 1914, and that the lien of the plaintiff upon all of the property described in said trust deed and mortgage of date January 1, 1916, and the lien of the plaintiff upon all of the property described in the said mortgage of Annie Marie Belford of date June 20, 1914, be declared a good and valid lien upon all of said property.

(d) That a receiver be appointed to immediately take charge and possession of all of the property described in the aforesaid trust deed and mortgage of January 1, 1916, and receive and collect all the rents, issues and profits thereof and conserve the same under the direction of this court, pending the final determination of this action.

(e) That a decree may be made for the sale of the real estate and water stock described in said trust deed of January 1, 1916, by the United States Marshal.

or such other commissioner as the court may appoint, according to the law and practice of this court; that the proceeds of said sale may be applied in payment of the amount due the plaintiff, and that said defendants Friend J. Austin and Lettie M. Austin, and all persons claiming under them, or either of them, subsequent to the execution of said trust deed upon said land and said water stock, either as purchasers, encumbrancers, or otherwise, may be barred and foreclosed of all right, claim or equity of redemption in the said property and every part thereof, and that the said plaintiff may have judgment against the defendants Friend J. Austin and Lettie M. Austin for any deficiency which may remain after applying all of the proceeds of the sale of said property properly applicable to the satisfaction of said judgment; that the plaintiff, or any other parties to this suit, may become a purchaser, or purchasers, at said sale; that the United States Marshal, or other commissioner appointed by the court, execute a deed to the purchaser, or purchasers, and that the said purchaser, or purchasers, be let into possession of the premises on production of the Marshal's or Commissioner's deed therefor, and that the water stock be transferred by the Imperial Water Company No. 3 upon the books of said company into the name or names of the person or persons producing said deed from the Marshal or Commissioner.

(f) That a decree may be made for the sale of the real estate and water stock described in the said mortgage of Annie Marie Belford of date June 20, 1914, by the United States Marshal, or such other commis-

sioner as the court may appoint, according to the law and the practice of this court. That the proceeds of said sale may be applied in payment of the amount due the plaintiff from the said defendant Annie Marie Belford, and that the said defendants Annie Marie Belford and William Martin Belford, Friend J. Austin and Lettie M. Austin, and all persons claiming under them, or either of them, subsequent to the execution of said mortgage upon said land and said water stock, either as purchasers, encumbrancers, or otherwise may be barred and foreclosed of all right, claim or equity of redemption in the said property and every part thereof, and that the said plaintiff may have judgment against the said defendant Annie Marie Belford for any deficiency that may remain after applying all of the proceeds of the sale of said property properly applicable to the satisfaction of the said judgment herein entered against her and in favor of the plaintiff; that the plaintiff, or any other parties to this suit, may become purchaser or purchasers at said sale; that the Marshal or other commissioner appointed by the court execute a deed to the purchaser or purchasers; that the said purchaser or purchasers be let into possession of the premises on production of the Marshal's or commissioner's deed therefor, and that the water stock be transferred by the Imperial Water Company No. 5 upon the books of said company into the name or names of the person or persons producing the deed from the Marshal or commissioner.

(g) That the amount received by the plaintiff upon the sale of the aforesaid premises described in the mortgage of the defendant Annie Marie Belford shall

be credited as a payment upon the amount of the judgment rendered in favor of the plaintiff and against the defendants Friend J. Austin and Lettie M. Austin.

(h) That a decree may be made for the sale of the promissory note and mortgage of Joseph Carrick of date March 3, 1915, by the United States Marshal, or such other commissioner as the court may appoint, according to the law and the practice of this court. That the proceeds of said sale may be applied in payment of the amount due the plaintiff from the said defendants Friend J. Austin and Lettie M. Austin; or, as alternative relief, in the event that the court shall decree that the aforesaid note and mortgage of Joseph Carrick cannot be sold, as hereinbefore prayed, then and in that event the plaintiff prays that the court retain jurisdiction of the subject matter of this action until such time as the aforesaid note and mortgage of Joseph Carrick become due and payable, and that in the event the aforesaid note and mortgage of Joseph Carrick is not paid in full, according to its terms and conditions when due, then and in that event the plaintiff, or its assignee, may file a supplemental bill in this proceeding praying for a foreclosure of the aforesaid mortgage of the said Joseph Carrick and a sale of the property described therein, according to law and the practice of this court, and for such other relief in the premises as may be just and equitable.

(i) That the plaintiff may have its costs of action and such further relief in the premises as to this court may seem meet and equitable in equity.

W. J. Hunsaker

E. W. Britt

LeRoy M. Edwards

Attorneys for plaintiff.

STATE OF UTAH,)
) ss
 County of Salt Lake.)

M. F. RYAN, being first duly sworn, deposes and says:

That he is an officer, to wit, President of the plaintiff corporation above named; that he has read the foregoing bill in equity and knows the contents thereof, and that he has knowledge of the facts therein stated; that the same are true, except as to the matters therein alleged on information and belief, and as to such matters he believes it to be true.

M. F. Ryan

Subscribed and sworn to before me this 7th day of February, 1918.

(Seal)

A. E. Burdette

Notary Public in and for the county of Salt Lake,
 state of Utah.

My commission expires November 2, 1921.

[Endorsed]: ORIGINAL In Equity No. D 61 Eq.
 In The United States District Court Southern Dis-
 trict of California Southern Division FRANCES
 INVESTMENT COMPANY, a corporation, plaintiff,
 vs. Friend J. Austin, et al, defendant. BILL IN

EQUITY. FILED FEB 15 1918 CHAS. N. WILLIAMS, Clerk By R. S. ZIMMERMAN, Deputy Clerk STORY & STEIGMEYER HUNSAKER & BRITT AND LE ROY M. EDWARDS 1132-1143 Title Insurance Bldg. Fifth and Spring Streets Los Angeles, Cal. Attorneys for plaintiff

UNITED STATES OF AMERICA

District Court of the United States
SOUTHERN DISTRICT OF CALIFORNIA
SOUTHERN DIVISION

In Equity

The President of the United States of America, Greeting!

To Friend J. Austin, Lettie M. Austin, his wife, William Martin Belford and Annie Marie Belford, his wife, and The Peoples Abstract & Title Company, a corporation.

You Are Hereby Comanded, That you be and appear in said District Court of the United States aforesaid, at the Court Room in Los Angeles, California on or before the twentieth day, excluding the day of service, after service of this subpoena upon you, to answer a Bill of Complaint exhibited against you in said Court by Frances Investment Company, a corporation who is a citizen of the State of Utah and to do and receive what the said court shall have considered in that behalf. And this you are not to omit, under the penalty of FIVE THOUSAND DOLLARS.

Witness, The Honorable Benjamin F. Bledsoe, Judge of the District Court of the United States, this 15th day of February in the year of our Lord one thousand nine hundred and eighteen and of our Independence the one hundred and forty second.

CHAS. N. WILLIAMS

(Seal)

Clerk.

By R S Zimmerman

Deputy Clerk.

MEMORANDUM PURSUANT TO RULE 12 OF
RULES OF PRACTICE FOR THE COURTS
OF EQUITY OF THE UNITED STATES,
PROMULGATED BY THE SUPREME
COURT, NOVEMBER 4, 1912.

On or before the twentieth day after service of the subpoena, excluding the day thereof, the defendant is required to file his answer or other defense in the Clerk's Office;

otherwise the Bill may be taken pro confesso.

CHAS. N. WILLIAMS

Clerk.

By R S Zimmerman

Deputy Clerk.

UNITED STATES MARSHAL'S OFFICE }
SOUTHERN DISTRICT OF CALIFORNIA } ss:

I Hereby Certify, That I received the within writ on the 18th day of February, 1918, and personally served the same on the 22nd day of February, 1918, on Friend J. Austin, Lettie M. Austin his wife, Martin

Belford and Annie Marie Belford, his wife, F. B. Fuller, People Abstract & Title Company, a Corp., F. B. Fuller as Director of said Peoples Abstract & Title Co., a Corp., by delivering to and leaving with Them said defendants named therein, personally, at the County of Imperial in said district, a copy thereof
San Diego, Cal.

February 22nd, 1918.

W. T. Walton
U. S. Marshal.
By W. C. Carse
Deputy.

To the Marshal of the United States for the Southern District of California:

Pursuant to Rule 12, the within subpoena is returnable into the Clerk's Office twenty days from the issuing thereof.

Subpoena Issued February 15th, 1918

Chas. N. Williams,
Clerk.

By R S Zimmerman
Deputy Clerk.

[Endorsed]: Marshal's Civil Docket No. 3504 No. D 61 Equity United States District Court SOUTHERN DISTRICT OF CALIFORNIA Southern Division IN EQUITY Frances Investment Company, a corporation, vs. Friend J. Austin, et al. SUBPOENA FILED FEB. 27 1918 CHAS. N. WILLIAMS, Clerk. R. S. Zimmerman Deputy Clerk.

In Equity

No. D 61

UNITED STATES DISTRICT COURT, SOUTH-
ERN DISTRICT OF CALIFORNIA,
SOUTHERN DIVISION.

FRANCES INVESTMENT :
COMPANY, a corporation,

:
Plaintiff,

:
Vs.

FRIEND J. AUSTIN, LET- :
TIE M. AUSTIN, His wife, :
WILLIAM MARTIN BEL- :
FORD, and ANNIE MARIE :
BELFORD, his wife, and :
THE PEOPLES AB- :
STRACT & TITLE COM- :
PANY, a corporation, :

Defendants.

: STIPULATION
FOR LEAVE TO
FILE SUPPLE-
MENTAL BILL OF
COMPLAINT.

IT IS STIPULATED that the plaintiff may at any time with in thirty (30) days from date hereof file a Supplemental Bill of Complaint herein, bringing in an additional party or parties.

DATED: December 15th, 1919.

Wm Story Jr.

Joseph L. Lewinsohn

Attorneys for Plaintiff.

H. F. Davis

Attorneys for certain Defendants.

So Ordered:

Bledsoe

District Judge.

DATED: December 15, 1919.

[Endorsed]: No. D-61 Equity. United States District Court Southern District of California Southern Division FRANCES INVESTMENT COMPANY a corporation, Plaintiff. vs. FRIEND J. AUSTIN, LETTIE M. AUSTIN, his wife, et al. Defendants. STIPULATION FOR LEAVE TO FILE SUPPLEMENTAL BILL OF COMPLAINT. FILED DEC 15 1919 CHAS. N. WILLIAMS, Clerk By R. S. Zimmerman Deputy Clerk LISSNER & LEWIN-SOHN Attorneys at Law Lissner Building Los Angeles, Cal.

UNITED STATES DISTRICT COURT, SOUTH-
ERN DISTRICT OF CALIFORNIA,
SOUTHERN DIVISION.

FRANCES INVESTMENT COM-)	
PANY, a corporation,)	
	Plaintiff,)
)
	vs.)
Friend J. Austin, Lettie M. Austin,)	
his wife, William Martin Bel-)	
ford, Annie Marie Belford, his)	
wife, The Peoples Abstract &)	
Title Company, a corporation, H.)	
F. Davis and Meryl J. Davis, his)	
wife, John W. Austin and Laura)	SUPPLE-
A. Austin, his wife, Jasper Thom-)	MENTAL
ason, Jesse Boyd Pilcher, Thomas)	BILL IN
Edwin Gill and Myra Ritzinger)	EQUITY.
Gill, his wife, Harry D. Aron, T.)	
P. Banta, Robert B. Walker, Paul)	
H. Marlay, Richard Doe, John)	
Roe, F. M. Rubblee, Sarah Doe,)	
Jane Doe, Sarah Roe, Jane Roe,)	
A-1 Company, a corporation, B-1)	
Company, a corporation, C-1)	
Company, a corporation, Imperial)	
Water Company, No. 1, Imperial)	
Water Company #3, Imperial)	
Water Company #5, Wade M.)	
Boyer and Leah A. Boyer, his)	
wife,)	
	Defendants.)

TO THE HONORABLE JUDGES OF THE DIS-
TRICT COURT, SOUTHERN DISTRICT OF
CALIFORNIA, SOUTHERN DIVISION:

Frances Investment Company, a corporation, or-
ganized and existing under and by virtue of the laws
of Utah, and a resident of said state, with its principal

place of business in the City of Salt Lake, State of Utah, leave of Court having been first had and obtained, brings this its supplemental bill against Thomas Edwin Gill and Myra Ritzinger Gill, his wife, Harry D. Aron, John W. Austin and Laura A. Austin, his wife, and Jesse Boyd Pilcher, citizens of the State of California and residents of the County of Los Angeles in said stste, H. F. Davis and Merl J. Davis, his wife, and T. P. Banta, Wade N. Boyer and Leah A. Boyer, his wife, citizens of the State of California and residents of the county of Imperial in said state, Jasper Thomason, a citizen of California and a resident of Orange County in said state, Robert B. Walker a citizen of the state of Iowa and a resident therein, A-1 Company, B-1 Company, C-1 Company, Imperial Water Company No. 1, Imperial Water Company No. 3, Imperial Water Company No. 5, all corporations organized and existing under and by virtue of the laws of the State of California, and John Doe, Richard Doe, John Roe, Richard Roe, Sarah Doe, Jane Doe, Sarah Roe, and Jane Roe, citizens of the State of California and residents in the aforesaid district.

And for cause of action against defendants named in the paragraph aforesaid, plaintiff states:

1. That on or about the 1st day of January, 1916, in the County of Beaver, State of Utah, said defendants, Friend J. Austin and Lettie M. Austin, his wife, for a valuable and adequate consideration, made and executed their joint and promissory note in writing, bearing date on that date, and delivered the same to the Delta Land & Water Company, a corporation organized and existing under and by virtue of the laws

of the State of Utah. By the terms of said note said Friend J. Austin and Lettie M. Austin, his wife, promised to pay the Delta Land and Water Company or order at its office in Milford, Beaver County, Utah, Fifty-five thousand (\$55,000) dollars, in installments of Five thousand (\$5000) dollars each, payable respectively on or before three, four, five, six and seven years after date, and three additional installments of Ten thousand (\$10,000) dollars each, payable respectively on or before eight, nine and ten years after date, together with interest payable annually on January 1st of each year commencing with the year 1917, on each and all of said installments, at the rate of six per cent per annum from date thereof until maturity; and promised, further, that if default should be made and continue for thirty days in the payment of any installment of said principal or interest or any part thereof, the unpaid principal of said note and all accrued interest thereon should become immediately due and payable at the option of the legal holder thereof.

2. Said defendants, Friend J. Austin and Lettie M. Austin, his wife, to secure the payment of said promissory note, according to the tenor thereof, did at said time and place execute and deliver to the defendant, Peoples Abstract & Title Company, for the benefit of said Delta Land and Water Company a certain trust deed and mortgage, also bearing date on the 1st day of January 1916, by the terms of which they transferred and conveyed to the Peoples Title & Abstract Company, as trustee, for the use and benefit of the Delta Land and Water Company, the following described premises, situate in Imperial County, California, to wit:

The east one-half of Section Twenty, Township Twelve South, Range Fourteen East, San Bernardino Meridian; containing 320 acres, more or less;

together with three hundred shares of the capital stock of Imperial Water Company No. 3, a corporation organized and existing under the laws of California, evidenced by certificates Nos. 139 and 463 for 150 shares each, which, by the terms of said certificates and by-laws of said water company, are appurtenant to the lands aforesaid.

That said deed of trust was on the uses and terms therein set forth, and a copy of said deed of trust is set out at length in the original bill of complaint herein, and is hereby referred to and made a part of this supplemental bill of complaint with the same force and effect as if copied herein at length.

That said trust deed and mortgage was also signed by the Delta Land & Water Company and by The Peoples Abstract & Title Company on or about the said first day of January, 1916, and the said trust deed and mortgage was duly executed and certified by all of the parties executing the same, so as to entitle it to be recorded, and the said trust deed was afterwards, to wit, on the 30th day of March, 1916, duly recorded in the office of the county recorder of the county of Imperial, state of California, in book 107 of deeds, page 351.

3. That the said defendants, Friend J. Austin and Lettie M. Austin, his wife, as security for the payment of the said promissory note according to the tenor

thereof, did at the same time and place transfer and assign to the Delta Land & Water Company that certain promissory note of the defendant, Annie Marie Belford, dated June 20th, 1914, in the principal sum of Ten thousand dollars due five years after date, payable to the defendant, Friend J. Austin, bearing interest at the rate of eight per cent per annum, payable semiannually, and the mortgage of said defendant, Annie Marie Belford, securing said promissory note. By said mortgage, the mortgagors mortgaged to the mortgagee real property situate in Imperial County, State of California, to wit:

Northeast quarter of Section 8, Tp. 14 South, R. 16 East, S. B. M. 160 acres according to plat of Survey approved Oct. 18, 1856, being southwest quarter of the northeast quarter, and the southeast quarter of the northwest quarter, Lots 8 and 10, Sec. 3, Tp. 14 South, R. 16 East, S. B. M., California, containing 141.95 acres, according to plat of resurvey approved Nov. 4, 1908, together with one hundred and thirty-four (134) shares of the capital stock of Imperial Water Co. #5 evidenced by certificate #2303 of said Imperial Water Co. #5.

TOGETHER with all and singular the tenements, hereditaments and appurtenances thereunto belonging, or in anywise appertaining, and the reversion and reversions, remainder and remainders, rents, issues and profits thereof.

That said note and mortgage are set forth at length in the original bill of complaint herein, and are hereby

referred to and made a part hereof with the same force and effect as though copied at this point at length.

That the aforesaid mortgage of the defendant Annie Marie Belford to the defendant Friend J. Austin was recorded on June 22, 1914, in Book 30, page 142, et seq. of mortgages, Imperial County record, California.

4. That said defendants, Friend J. Austin and Lettie M. Austin, his wife, as further security for the payment of said promissory note of January 1st, 1916, according to the tenor thereof, did at the same time and place transfer and assign to the Delta Land & Water Company that certain promissory note of one Joseph Carrick, dated March 3, 1915, for the principal sum of \$12000.00, payable to the order of Friend J. Austin five years after date, with interest at the rate of 8 per cent per annum, payable semiannually, and a mortgage of said Joseph Carrick, as mortgagor, to Friend J. Austin, as mortgagee, upon the southwest quarter of Section 4, Township 12 South, Range 15 East, San Bernardino Meridian, in Imperial County, California, and 150 shares of the stock of Imperial Water Company No. 3, issued to the said Joseph Carrick, and assigned by said Joseph Carrick to the said Friend J. Austin, which said mortgage is recorded in book 35, page 183, mortgages, in said Imperial county records.

5. That thereafter and on or about the 2nd day of January, 1917, the N. and E. J. Allen Company, a corporation, in due course of business, for a valuable and adequate consideration, and prior to maturity, pur-

chased and acquired of and from the Delta Land & Water Company, and the Delta Land & Water Company at said time endorsed, transferred and assigned to said N. & E. J. Allen Company the aforesaid promissory note executed January 1, 1916, by Friend J. Austin and Lettie M. Austin, and also the aforesaid promissory note and mortgage of the defendant Annie Marie Belford, dated June 20, 1914, and the aforesaid promissory note and mortgage of Joseph Carrick, dated March 3, 1915, and on or about the 5th day of March, 1917, said Frances Investment Company, plaintiff herein, in due course of business prior to maturity and for a valuable consideration purchased and acquired from said N. & E. J. Allen Company the aforesaid notes and mortgages and each of them, and ever since said 5th day of March, 1917, plaintiff has been and now is the lawful owner and holder of said promissory notes and mortgages and each of them. That on or about the date of the assignments thereof to it, as aforesaid, the plaintiff duly notified the said Annie Marie Belford and Joseph Carrick that their respective notes and mortgages had been sold and assigned to it, and on or about the 30th day of November, 1917, the plaintiff notified the defendant The Peoples Abstract & Title Company in writing that the aforesaid promissory note of the defendants Friend J. Austin and Lettie M. Austin had been assigned to it, and that it, the plaintiff, was the lawful owner and holder of same. That on the 30th day of November, 1917, the plaintiff caused to be recorded in book 5, page 1, of Assignments, Imperial County records, California, the assignment by the Delta Land & Water Company to the plaintiff of

the aforesaid promissory note and mortgage of the defendant Annie Marie Belford hereinbefore set forth, and on the 30th day of November, 1917, caused to be recorded in book 5, page 2, of Assignments, Imperial County Records, California, the assignment by the Delta Land & Water Company to the plaintiff of the aforesaid note and mortgage of Joseph Carrick.

6. That no part of the principal of said promissory note of the defendants Friend J. Austin and Lettie M. Austin, has been paid, except the sum of \$1965.45, which was paid on account of such interest at or about the time of the purchase of said note by the plaintiff, in consequence whereof this plaintiff has elected to and hereby does declare the principal of said note, together with all accrued and unpaid interest thereon, to be now due and payable.

7. That no part of the principal or interest of said promissory note of the defendant Annie Marie Belford has been paid, except the interest thereon to July 20, 1917. in consequence whereof the plaintiff has elected to, and hereby does, declare the principal of said note, together with the interest thereon from the 20th day of July, 1917, to be now due and payable.

8. That on the 2nd day of October, 1917, the defendants, Friend J. Austin, and Lettie M. Austin, his wife, and the defendants William Martin Belford and Annie Marie Belford, his wife, with intent and design to cheat and defraud the plaintiff out of its security, as aforesaid, did file their verified petition in the office of the Clerk of the Superior Court of the County of Imperial, State of California, praying for a decree of

said Court directing the registration of title free and clear from said security under the terms and conditions of that certain law enacted by the people of the State of California, adopted and passed at the general election held on November 3, 1914, entitled "An Act to Amend an Act entitled, "An Act for the Certification of Land Titles and the Simplification of the Transfer of Real Estate", approved March 17, 1887", and pursuant to, and as a part of their scheme to defraud and injure the plaintiff and the Delta Land & Water Company, and to deceive the said Superior Court of California for the County of Imperial, through their attorney, H. F. Davis, did procure, by false and fraudulent affidavits, from the Honorable Franklin J. Cole, findings of fact and decree, by which the land described in the deed of trust and mortgage aforesaid was registered in the name of said defendants Friend J. Austin and Lettie M. Austin, his wife, and defendants William Martin Belford and Annie Marie Belford, his wife, free and clear of the said deed of trust and mortgages; that said findings of fact and decree were made on the 7th day of December, 1917, and filed in said court, and on the 13th day of December, 1917, a certificate of title, No. 74, under said Act, was issued by the Registrar of said Imperial County, showing title to said property to be vested in said defendant Friend J. Austin and Lettie M. Austin, his wife, as community property.

That the several facts and circumstances and the fraudulent means and methods of the before mentioned defendants are set forth at length in the original bill

of complaint herein, and are hereby referred to and made a part hereof with the same force and effect as if copied herein at this point.

9. That subsequent to the second day of October, 1917, and prior to the 13th day of December, 1917, the defendants William Martin Belford and Annie Marie Belford sold, transferred and conveyed by instrument of conveyance to the defendants Friend J. Austin and Lettie M. Austin all of their right, title and interest in and to the property described in the aforesaid mortgage of Annie Marie Belford of date June 20, 1914, and that the said defendants Friend J. Austin and Lettie M. Austin are now the owners of the legal fee to said property.

10. That the plaintiff herein and the said Delta Land & Water Company, and each of them, have now, and did have during all of the times herein mentioned, a good, sufficient and meritorious defense to the aforesaid action to register title brought by the defendants Friend J. Austin, Lettie M. Austin, Annie Marie Belford and William Martin Belford, hereinbefore set forth, in so far as the same sought to invalidate or injuriously affect the rights and interests of the beneficiary under said trust deed of January 1, 1916, and the rights and interests of the holder of the aforesaid note and mortgage of Annie Marie Belford of date June 20, 1914. That the plaintiff was a bona fide purchaser for value before maturity of the aforesaid note of the defendants Friend J. Austin and Lettie M. Austin of date January 1, 1916, and of the aforesaid promissory note of Annie Marie Belford and the mortgage

securing same of date June 20, 1914; that each and every one of the allegations contained in said application to register title as to false and fraudulent statements and representations alleged to have been made by the Delta Land and Water Company, its agents, servants or employees, to the defendants Friend J. Austin and Lettie M. Austin, or either of them, is false and untrue.

11. That neither the plaintiff, nor the Delta Land & Water Company had any knowledge or information of the institution or pendency of the aforesaid action to register title, or of any of the proceedings had or taken therein as hereinbefore set forth, prior to about the 28th day of December, 1917.

12. The plan or scheme to defraud the Delta Land & Water Company and procuring the fraudulent registration of the title to said land as aforesaid, was conceived by the defendant H. F. Davis, and at all times herein mentioned said defendant H. F. Davis acted as the attorney and agent for the defendants Friend J. Austin and Lettie M. Austin, William Martin Belford and Annie Marie Belford, in the furtherance and execution of said plan or scheme.

Said defendant Meryl J. Davis is, and at all times herein mentioned, was the wife of defendant H. F. Davis; that said defendant Jasper Thomason is and at all times herein mentioned was the father of said defendant Meryl J. Davis; and the defendant T. P. Banta is and at all times herein mentioned was the father of one Banta, who is and at all times herein mentioned was the law partner of defendant H. F.

Davis; and the defendant John W. Austin is and at all times herein mentioned was a real estate and mortgage broker, with his office in Los Angeles, California.

That on or about December 1st, 1917, at the town of El Centro, California, said defendants H. F. Davis, Meryl J. Davis, Friend J. Austin and Lettie M. Austin conspired, confederated and agreed *betwee* themselves and each other to sell the property above described, if the same should be registered in said proceeding, and to conceal and secrete the funds and assets realized by the sale thereof, and all for the purpose of cheating and defrauding said Delta Land & Water Company.

That on or about December 13, 1917, at Los Angeles, California, defendants H. F. Davis, Meryl J. Davis John W. Austin, Jesse Boyd Pilcher and Jasper Thomason conspired, confederated and agreed between themselves and each other to further said conspiracy, to conceal said funds and assets and to assist in the execution thereof.

13. That on or about the 14th day of December, 1917, said defendants, Friend J. Austin and Lettie M. Austin, his wife, made, executed and delivered their deed, by which they conveyed to Jasper Thomason as his separate property, the southwest quarter of section 4, Township 12 South, Range 15 East, San Bernardino Meridian; that on said day said deed of conveyance was registered in Torrens Certificate No. 77 in the office of the Registrar of Torrens titles in said County of Imperial, State of California.

That on the 14th day of February, 1918, said Jasper Thomason made and executed his deed, by which he

conveyed the last described property to Jesse Boyd Pilcher, as his separate property. That on said day said deed was registered with said Registrar and Torrens Certificate No. 85, on said property, was issued to said Jesse Boyd Pilcher, by said Registrar.

That on the 11th day of February, 1918, said defendant Jesse Boyd Pilcher had made and executed his mortgage upon said real property to defendant John W. Austin, for the sum of \$8500.00, and said Certificate No. 85 showed said mortgage as an incumbrance on said property.

That on the 15th day of February, 1918, the said defendant Jesse Boyd Pilcher made and executed his deed, by which he conveyed the said property to said defendant Harry D. Aron, as his separate property. That on said day said deed was registered with said Registrar and Torrens Certificate No. 87 on said property was issued to said defendant Harry D. Aron by said Registrar.

That on the 2nd day of October, 1918, defendant John W. Austin assigned said mortgage for \$8500.00 to defendant T. P. Banta, and said Certificate No. 87 showed the said mortgage as assigned to be an incumbrance on said property. Said mortgage was thereafter assigned, on May 5, 1919, by said defendant T. P. Banta to John W. Wolfe, as shown by said Certificate No. 87.

That on or about June 23, 1919, defendant Harry D. Aron executed his deed, by which he conveyed said property to defendant Robert B. Walker as his separate property, and said deed was registered in Torrens

Certificate No. 120 in the office of the Registrar of Torrens titles in the County of Imperial, State of California.

That on or about December 14, 1917, said defendants Friend J. Austin and Lettie M. Austin, his wife, made and executed their deed, by which they conveyed to defendant Jasper Thomason, as his separate property, the east half of Section 20, Township 12 south, Range 14 east, San Bernardino Meridian. Said deed was registered with said Registrar and Torrens Certificate No. 76 was by him issued to said defendant Jasper Thomason on said property.

That on the 13th day of February, 1918, the said defendant Jasper Thomason transferred said premises to defendants Thomas Edwin Gill and Myra Ritzinger Gill, his wife, as joint tenants, On said day said deed was registered with said Registrar and Torrens certificate No. 84 on said property was issued by said Registrar to said defendants Thomas Edwin Gill and Myra Ritzinger Gill.

That on or about December 14, 1917, said defendants, Friend J. Austin and Lettie M. Austin, his wife, by Torrens certificate No. 78 in said Imperial County conveyed the Northeast quarter of Section 8, Township 12 South, Range 16 East, to defendant Jasper Thomason, and on the 14th day of February, 1918, said defendant Jasper Thomason, by Torrens certificate No. 86 in said Imperial County, conveyed said premises to defendant Jesse Boyd Pilcher, and on the 18th day of February, 1918, said Jesse Boyd Pilcher made and executed a mortgage upon said premises in favor of defendant John W. Austin, for the sum of \$5,000.

That on the 15th day of February, 1918, said defendant Jesse Boyd Pilcher, by Torrens certificate No. 88 in said Imperial County, conveyed said property to defendant, Harry D. Aron, subject to the aforesaid mortgage of said defendant John W. Austin; that on the 2nd day of March, 1918, said mortgage was assigned by said defendant John W. Austin to defendant Waller Bruce Watt, who on March 4, 1918, assigned the same to the Security Commercial & Savings Bank of El Centro, a corporation, which bank thereafter, on the 30th day of April, 1918, assigned the same to said William H. Watt.

14. That the aforesaid transfers, certificates, assignments and conveyances and each and every of them were made and accepted by the defendants and each of them, with full knowledge of the rights of the plaintiff under the aforesaid deed of trust and mortgages, and with full knowledge that said decree of registration was procured by fraud, as aforesaid, and said transfers, certificates, assignments and conveyances were made without consideration, except as hereinafter expressly alleged.

15. That said transfers and conveyances from defendants Friend J. Austin and Lettie M. Austin, mesne conveyances, to said defendants Thomas Edwin Gill and Myra Ritzinger Gill, as aforesaid, were made upon the following consideration, to-wit:

The conveyance of certain town lots in the City of Phoenix, State of Arizona, by said defendants Thomas Edwin Gill and Myra Ritzinger Gill to the defendant Meryl J. Davis, and the conveyance by said defendants Thomas Edwin Gill and Myra Ritzinger Gill to the de-

fendant Jasper Thomason, of the following described property, viz:

The Southwest quarter of the North half of Tract 47, Township 15 S., R. 14 East, San Bernardino Meridian, together with thirty-two shares of the capital stock of Imperial Valley Water Company No. 1; also the Southeast quarter of the north half of Tract 48, Township 15 South, Range 14 East, San Bernardino Meridian, together with thirty-eight shares of the capital stock of Imperial Water Company No. 1. The deed of conveyance was dated February 9, 1918, acknowledged February 11, 1918, and recorded February 13, 1918, in book 130 of Deeds, page 375 Records of Imperial County, California.

That on or about February 15, 1918, said defendant Jasper Thomason conveyed the property last described by deed of conveyance to said defendant John W. Austin, and said deed was acknowledged February 16, 1918, and recorded February 18, 1918, in book 130 of Deeds, page 411, Records of Imperial County, California.

That on or about May 5, 1919, the said property last described was transferred, by said defendant John W. Austin and said defendant Laura A. Austin by their deed of conveyance, to defendant T. P. Banta, and said deed of conveyance is recorded in book 144 of Deeds, at page 138, Records of Imperial County, California; and said property now stands of record in the name of said defendant T. P. Banta.

That said transfers from said defendants Thomas Edwin Gill and Myra Ritzinger Gill to said defendant

Jasper Thomason, and from said defendant Jasper Thomason to defendant John W. Austin, and from said defendants John W. Austin and Laura A. Austin to said T. P. Banta, were each and every of them without any consideration whatever.

That on or about May 5, 1919, said town lots, located in the city of Phoenix, State of Arizona, as aforesaid, were transferred by defendants Meryl J. Davis and H. F. Davis, by their deed of conveyance, to John W. Wolfe, and at the same time said defendant Banta assigned and transferred to said Wolfe a certain mortgage, for and in the sum of \$8,500, theretofore assigned to said defendant Banta by defendant John W. Austin as aforesaid; said mortgage being on the East half of Section 20, Township 12 South, Range 14 East, San Bernardino Meridian as aforesaid.

That said transfer, conveyance and assignment of said town lots and said mortgage to said John W. Wolfe were upon the following consideration, to wit:

The conveyance by said John W. Wolfe to the defendant Meryl J. Davis of the north eighty-one acres of Tract 68, together with a certificate representing sixty-five shares of the stock of Imperial Water Company No. 1, and all the stock and personal property on said real property; said conveyance being by deed of conveyance made on or about May 5, 1919, and recorded on said date in book 144 of deeds, page 134, Records of Imperial County, California. That on or about November 13, 1919, by deed of conveyance dated October 25, 1919, said defendants H. F. Davis and Meryl J. Davis transferred and conveyed to defend-

ants Wade N. Boyer and Leah A. Boyer the real estate above described, together with said water stock and personal property; said deed of conveyance being recorded in book 153 of deeds, page 149, records of Imperial County, California.

That said transfer from the defendants H. F. Davis and Meryl J. Davis to the defendants Wade N. Boyer and Leah A. Boyer was without any consideration whatever and under the following circumstances, to wit: One J. D. De Lozier levied an attachment on said property on October 28, 1919, in a suit against the defendants H. F. Davis and Meryl J. Davis, for commissions alleged to have arisen out of the transactions above described between said H. F. Davis, and Meryl J. Davis and said John W. Wolfe. That thereupon, in the attempt to defeat said attachment, defendants H. F. Davis and Meryl J. Davis placed on record, as aforesaid, on November 13, 1919, the said deed purporting to bear date October 25, 1919, but the true date of which is to plaintiff unknown.

16. That on or about December 14, 1917, the said Southeast quarter of the Northwest quarter, the Southwest quarter of the Northeast quarter, and Lots 8 and 10, all in Section 3, Township 14 South, Range 16 East, San Bernardino Meridian, was transferred by Torrens certificate from said defendant Friend J. Austin to said defendant Jasper Thomason, and on February 14, 1918, from said defendant Jasper Thomason to defendant Jesse Boyd Pilcher, and on or about February 14, 1918, said defendant Jesse Boyd Pilcher executed a mortgage upon said property to said defendant

John W. Austin, to secure a note for \$5,000; said mortgage being dated February 11, 1918, and registered February 14, 1918, all as aforesaid.

That on or about March 2nd, 1918, the said mortgage was assigned by the said defendant John W. Austin to Waller Bruce Watt, as aforesaid. The said assignment was in consideration of the transfer by said Waller Bruce Watt to the defendant John W. Austin of the following described property:

The West half of the Southwest quarter of the southwest quarter of Section 18, Township 4 South, Range 10 West, San Bernardino Meridian, situated and being in the City of Stanton, County of Orange, State of California, together with the assignment by said Waller Bruce Watt to said defendant John W. Austin of an undivided one half interest to the pumping plant and appurtenances of said property; said assignment having been made on March 1st, 1918, and said transfer was by deed of conveyance dated February 28, 1918, and recorded March 1, 1918, in *book* of deeds, Vol. 318, page 220, Records of Orange County, California.

That on or about May 6, 1918, defendants John W. Austin and Laura A. Austin, his wife, transferred to defendant Meryl J. Davis by their deed of conveyance, the above described property and said deed was recorded May 7, 1918, in Book of deeds, Vol. 319, page 355, Records of Orange County, California, together with an undivided one half interest in said pumping plant.

That on or about November 19, 1919, Defendants Meryl J. Davis and H. F. Davis conveyed to Frances

R. Wilson and A. M. Wilson, her husband, and Bertha Edgar and W. C. Edgar, her husband, the property above described, together with an undivided one half interest in and to said pumping plant, at the same time reserving unto said defendant Meryl J. Davis a mortgage for and in the sum of \$5,500, that said transfer was by deed of conveyance, dated November 19, 1919, and recorded Decembar 11, 1919, in book 346 of deeds, page 162, records of Orange County.

That said described real property now stands in the names of said Frances R. Wilson and A. M. Wilson, her husband, and Bertha Edgar and W. C. Edgar, her husband, subject to a mortgage in favor of defendant Meryl J. Davis, for and in the sum of \$5,500, and said transfer from said defendants John W. Austin and Laura A. Austin to *defednant* Meryl J. Davis was without any consideration whatever.

17. That in equity and good conscience plaintiff is entitled to the said North eighty-one acres of Tract 68, Township 15 South, Range 13 East, San Bernardino Meridian, Imperial County, California, together with the said sixty-five shares of stock of Imperial Water Company No. 1, and the stock and personal property thereon, and said plaintiff is likewise in equity and good conscience entitled to said *mortttage* in favor of the said defendant Meryl J. Davis, on the said West half of the Southwest quarter of the Southwest quarter in Section 18, Township 4 South, Range 10 West, San Bernardino Meridian, situated in the City of Stanton, County of Orange, as aforesaid, and said plaintiff is likewise in equity and good conscience en-

titled to the said real property in Imperial County standing in the name of said defendant T. P. Banta, as aforesaid.

18. That subsequent to the filing of the original bill of complaint herein, to wit, after February 15, 1918, said defendants Friend J. Austin and Lettie M. Austin, Thomas Edwin Gill and Myra Ritzinger Gill, and Harry D. Aron conspired and confederated together to further defraud the Delta Land & Water Company, by depriving it of the water stock aforesaid, and in order to carry out the same, wilfully and fraudulently failed and neglected to pay the assessments due thereon, so that the same was sold to said defendants Thomas Edwin Gill and Myra Ritzinger Gill and Harry D. Aron for non-payment of assessments.

19. That said defendant and each of them claims to have some right, title, interest, or lien, in or upon the above described premises, or some part thereof, as purchasers, mortgagees, judgment creditors, or otherwise, but such right, title, interest, or lien if any they have, are each and all of them subsequent, subject and subordinate to the title, interest and lien of the trust deed and mortgages of plaintiff hereinabove mentioned, and to the rights of the plaintiff thereunder, and also to the rights of the plaintiff in equity and good conscience as aforesaid.

WHEREFORE, plaintiff prays that it may have the relief prayed for in its original prayer in the original bill of complaint herein, and that all of the defendants herein named, and all persons claiming under them

subsequent to the execution of the aforesaid deed of trust and mortgages belonging to plaintiff, be barred and forever foreclosed of all rights, claims or equity of redemption on said property conveyed by said deed of trust, and said mortgages and every part thereof.

That defendants be required to surrender up the certificates of water stock, wrongfully acquired by reason of said delinquent sales as aforesaid, and said defendant Imperial Water Company No. 1; said Imperial Water Company #3, and said Imperial Water Company No. 5, be required to recognize the aforesaid certificates of plaintiff.

That defendant Meryl J. Davis and defendant H. F. Davis be required to transfer and convey to plaintiff said mortgage on said property in Orange County, above described, and said defendants Wade M. Boyer and Leah A. Boyer, be required to transfer and convey to plaintiff the real property now standing in their name as aforesaid, together with sixty-five shares of capital stock of the Imperial Water Company No. 1. as aforesaid, and the live stock and personal property on said premises, and defendant T. P. Banta be required to transfer and convey to plaintiff the said real property standing in his name.

That defendants and each of them be enjoined, during the pendency of this suit from in any manner disturbing the present status to the above described property.

That plaintiff may have such other and further relief in the premises as to this Court may seem meet and equitable.

And may it please your Honors to grant to this plaintiff a writ or writs of subpoena directed to the said defendants named in this supplemental bill of complaint who are not named in the original bill of complaint, and each of them issue out of and under the seal of this Honorable Court; thereby commanding them at a certain time and under a certain penalty, therein to be named, personally to be and appear before this Court, then and there civilly to make full and true answer to this supplemental bill of complaint not under oath (such answer under oath being hereby expressly waived) and to show cause, if any there be, why the prayer of the bill of complaint herein and of this supplemental bill of complaint should not be granted according to the rule and practice of this Court, and to stand, to perform and abide by such order, direction and decree as may be made against them in the premises, and as shall seem meet to equity and good conscience.

And your plaintiff, as in duty bound, will ever pray,
etc.

Wm. Story, Jr.,
Joseph L. Lewinsohn,
Solicitors for Plaintiff.

[Endorsed]: D 61 Eq UNITED STATES DISTRICT COURT Southern District of California Southern Division FRANCES INVESTMENT COMPANY, a corporation, Plaintiff, vs. FRIEND J. AUSTIN, et al., Defendants. SUPPLEMENTAL BILL IN EQUITY FILED JAN 23 1920 CHAS. N. WILLIAMS, Clerk By R. S. Zimmerman Deputy Clerk Wm Story Jr JOSEPH L. LEWINSOHN Los Angeles, Cal. Lissner Bldg. Attorney for plaintiff.

UNITED STATES DISTRICT COURT SOUTH-ERN DISTRICT OF CALIFORNIA SOUTH-ERN DIVISION

FRANCES INVESTMENT)
COMPANY, a corporation,)
Plaintiff,) ORDER FOR
vs.) SERVICE OF
FRIEND J. AUSTIN, et al.,) SUBPOENAS
Defendants.)

Good cause appearing therefor, it is ordered that subpoena ad respondendum issue as prayed for in the supplemental complaint and that same, together with restraining order herein may be served on the defendants found or residing outside of Los Angeles County by private person or persons.

DATED this 23rd day of January, 1920.

BLED SOE

Judge

[Endorsed]: D 61 No. D 61 in Equity United States District Court Southern District of California Southern Division FRANCES INVESTMENT CO., a corporation, Plaintiff vs. FRIEND J. AUSTIN, et al. Defendants ORDER FOR SERVICE OF SUBPOENAS FILED JAN 23 1920 CHAS. N. WILLIAMS Clerk, By R S Zimmerman Deputy Clerk LISSNER & LEWIN SOHN Attorneys at Law Lissner Building Los Angeles, Cal. Attorney for Plaintiff

UNITED STATES OF AMERICA

District Court of the United States
SOUTHERN DISTRICT OF CALIFORNIA
SOUTHERN DIVISION

In Equity

The President of the United States of America,
Greeting!

To Friend J. Austin, Lettie M. Austin, his wife, William Martin Belford, Annie Marie Belford, his wife, The Peoples Abstract & Title Company, a corporation, H. F. Davis and Meryl J. Davis, his wife, John W. Austin and Laura A. Austin, his wife, Jasper Thomason, Jesse Boyd Pilcher, Thomas Edwin Gill and Myra Ritzinger Gill, his wife, Harry D. Aron, T. P. Banta, Robert B. Walker, John Doe, Richard Doe, John Roe, Richard Roe, Sarah Doe, Jane Doe, Sarah Roe, Jane Roe, A-1 Company, a corporation, B-1 Company, a corporation, C-1 Company, a corporation, Imperial Water Company No. 1, Imperial Water Company #3, Imperial Water Company #5, Wade M. Boyer and Leah A. Boyer, his wife.

You Are Hereby Commanded, That you be and appear in said District Court of the United States aforesaid, at the Court Room in Los Angeles, California on or before the twentieth day, excluding the day of service, after service of this subpoena upon you, to answer a Supplemental Bill of Complaint exhibited against you in said Court by The Frances Investment Company, a corporation organized under the laws of

the State of Utah and to do and receive what the said court shall have considered in that behalf. And this you are not to omit, under the penalty of FIVE THOUSAND DOLLARS.

Witness, The Honorable BENJAMIN F. BLEDSOE, Judge of the District Court of the United States, this 23rd day of January in the year of our Lord one thousand nine hundred and twenty and of our Independence the one hundred and forty Fourth

(Seal)

Chas. N. Williams

Clerk.

By R S Zimmerman,

Deputy Clerk.

MEMORANDUM PURSUANT TO RULE 12, OF
RULES OF PRACTICE FOR THE COURTS
OF EQUITY OF THE UNITED STATES,
PROMULGATED BY THE SUPREME
COURT, NOVEMBER 4, 1912.

On or before the twentieth day after service of the subpoena, excluding the day thereof, the defendant is required to file his answer or other defense in the Clerk's Office;

otherwise the Bill may be taken pro confesso.

Chas. N. Williams

Clerk.

By R S Zimmerman

Deputy Clerk

UNITED STATES MARSHAL'S OFFICE }
 SOUTHERN DISTRICT OF CALIFORNIA }^{ss:}

I Hereby Certify, That I received the within writ on the 26th day of January, 1920, and personally served the same on the 29th day of January, 1920, on John W. Austin Mrs. John W. Austin, Thos E. Gill, Mrs. Thos E. Gill and Harry Aron by delivering to and leaving with John W. Austin, Mrs. John W. Austin by leaving copy with John W. Austin, husband; Thos E. Gill, Mrs. Thos. E. Gill by leaving copy with Thos E. Gill, Mrs. Thos. E. Gill, by leaving copy with Thos. E. Gill, husband; and Harry Aron said defendants named therein, personally, at the County of Los Angeles in said district, a copy thereof.....

Los Angeles,
 January 30, 1920.

C. T. Walton,
 U. S. Marshal,
 By W. S. Walton
 Deputy.

[Endorsed]: Marshal's Civil Docket No. 3918 No. D 61 Eq U. S. District Court SOUTHERN DISTRICT OF CALIFORNIA Southern Division IN EQUITY Frances Investment Co., vs. Friend J. Austin, et al. SUBPOENA FILED MAR 17 1920 CHAS. N. WILLIAMS Clerk By Emyr E. Jones Deputy Clerk

To the Marshal of the United States for the Southern Distric tof California:

Pursuant to Rule 12, the within subpoena is returnable into the Clerk's Office twenty days from the issuing thereof.

Subpoena Issued Jan 23, 1920

Chas N Williams

Clerk

By R S Zimmerman

Deputy Clerk

At a stated term, to wit: the January, A. D. 1920 term of the District Court of the United States of America, within and for the Southern Division of the Southern District of California, held at the Court room thereof in the city of Los Angeles, on Monday, the second day of February in the year of our Lord one thousand nine hundred and twenty;

Present:

The Honorable BENJAMIN F. BLEDSOE, District Judge

Frances Investment Company,)	
)	
Complainant,)	
)	
vs.	)	No. D-61-Eq.
)	
Friend J. Austin, et al.,)	
)	
Defendants.)	

This cause came on this date for hearing on order to show cause, J. L. Lewinsohn, Esq., appearing as attorney for complainants; Duke Stone, Esq. appearing as counsel for defendants, H. F. Davis, Wade M. Boyer, and Leah A. Boyer; James E. Kelby, Esq.,

appearing as counsel for defendant Paul H. Marlay; and Frank Rouse Esq. appearing as counsel for defendants Thomas Edwin Gill and Myla Ritzinger Gill. Upon motion of Lewinsohn, Stone, Kelby and Rouse consenting thereto, it is ordered that the hearing of the order to show cause why the defendants should not be enjoined from performing certain acts specified in the temporary restraining order filed herein on January 27th, 1920 be continued to 10 A. M. Monday, February 16th, 1920; and upon motion of Lewinsohn, Stone, Kelby and Rouse consenting thereto, it is further ordered that said temporary restraining order remain in full force and *deffect* during such period and until the further order of the Court. Upon motion of Lewinsohn, and good cause appearing therefor, it is further ordered that the supplemental bill of complaint filed herein on January 23, 1920 be amended by substituting Paul H. Marlay as a party defendant in the place and stead of John Doe and by substituting F. M. Rubblee as a party defendant in the place and stead of Richard Roe.

IN THE DISTRICT COURT OF THE UNITED STATES, SOUTHERN DISTRICT OF CALIFORNIA, SOUTHERN DIVISION.

FRANCES INVESTMENT))	
COMPANY,)	
a corporation,)	
	)	Plaintiff,) In Equity. Eq. No. D-61.
)	
vs.	)	NOTICE.
)	
FRIEND J. AUSTIN, et al.,))	
Defendants.))	

TO THE DEFENDANTS IN SAID CAUSE, and to Messrs. H. F. Davis, Duke Stone, Ralph Graham, James E. Kelby and Joseph Crail, their attorneys:

You and each of you will please take notice that on Monday, the 5th day of April, 1920, at 10 o'clock A. M., or as soon thereafter as counsel can be heard, the above named plaintiff Frances Investment Company will appear before his Honor, Judge Bledsoe, in the room usually occupied by him as a court room, in the Federal Building, at Los Angeles, California, and ask leave to file an amended supplemental bill of complaint, a copy of which is served upon you herewith, and then and there will also apply for an order that the various motions and pleadings now on file, directed to the supplemental bill of complaint, may be considered as directed to said amended supplemental complaint.

Dated this 31st day of March, 1920.

Wm Story Jr.

Joseph L. Lewinsohn

Attorneys for plaintiff

[Endorsed]: Original. No. Eq. D-61. UNITED STATES DISTRICT COURT Southern District of California Southern Division FRANCES INVESTMENT COMPANY, Plaintiff, vs. FRIEND J. AUSTIN, et al., Defendants. NOTICE. Receipt of a copy of the within is hereby admitted this 31 day of March 1920 Duke Stone atty for part of Defts and Joe Crail Attorney for Edwin Gill Myra Gill FILED APR 3 1920 CHAS. N. WILLIAMS, Clerk Maury Curtis Deputy Clerk WM STORY, JR. and JOSEPH L. LEWINSOHN Second and Hill Streets Los Angeles, Cal. Attorneys for Plaintiff.

UNITED STATES DISTRICT COURT, SOUTHERN DISTRICT OF CALIFORNIA, SOUTHERN DIVISION.

FRANCES INVESTMENT)
COMPANY,)
a corporation,)
)
Plaintiff,)
)
vs.)
)
FRIEND J. AUSTIN, LET-)
TIE M. AUSTIN, his wife,)
WILLIAM MARTIN BEL-)
FORD, ANNIE MARIE BEL-)
FORD, his wife, THE PEOP-)
LES ABSTRACT & TITLE)
COMPANY, a corporation, H.))
F. DAVIS and MERYLE T.))
DAVIS, his wife, JOHN W.))

AUSTIN and LAURA A.)	
AUSTIN, his wife, JASPER)	
THOMASON, JESSE BOYD)	AMENDED
PILCHER, THOMAS ED-)	SUPPLEMENTAL
WIN GILL and MYRA RITZ-)	BILL IN
INGER GILL, his wife,)	EQUITY.
HARRY D. ARON, T. P.)	
BANTA, ROBERT B.)	
WALKER, JOHN DOE,)	
RICHARD DOE, JOHN ROE,)	
RICHARD ROE, SARAH)	
DOE, JANE DOE, SARAH)	
ROE, JANE ROE, A-1 Com-)	
pany, a corporation, B-1)	
Company, a corporation, C-1)	
Company, a corporation, IM-)	
PERIAL WATER COM-)	
PANY No. 1, IMPERIAL)	
WATER COMPANY #3, IM-)	
PERIAL WATER COM-)	
PANY #5, WADE M.)	
BOYER and LEAH A.)	
BOYER, his wife,)	
Defendants.)	

TO THE HONORABLE JUDGES OF THE DISTRICT COURT, SOUTHERN DISTRICT OF CALIFORNIA, SOUTHERN DIVISION:

Frances Investment Company, a corporation, organized and existing under and by virtue of the laws of Utah, and a resident of said state, with its principal place of business in the City of Salt Lake, State of Utah, leave of Court having been first had and obtained, brings this its supplemental bill against Thomas Edwin Gill and Myra Ritzinger Gill, his wife, Harry D. Aron, John W. Austin and Laura A. Austin, his wife, and Jesse Boyd Pilcher, citizens of the State of

California and residents of the County of Los Angeles in said state, H. F. Davis and Meryle T. Davis, his wife, and T. P. Banta, Wade N. Boyer and Leah A. Boyer, his wife, citizens of the State of California and residents of the county of Imperial in said state, Jasper Thomason, a citizen of California and a resident of Orange County in said state, Robert B. Walker, a citizen of the state of Iowa and a resident therein, A-1 Company, B-1 Company, C-1 Company, Imperial Water Company No. 1, Imperial Water Company No. 3, Imperial Water Company No. 5, all corporations organized and existing under and by virtue of the laws of the State of California, and John Doe, Richard Doe, John Roe, Richard Roe, Sarah Doe, Jane Doe, Sarah Roe and Jane Roe, citizens of the State of California and residents of the aforesaid district.

And for cause of action against defendants named in the paragraph aforesaid, plaintiff states:

1. That on or about the 1st day of January, 1916, in the County of Beaver, State of Utah, said defendants, Friend J. Austin and Lettie M. Austin, his wife, for a valuable and adequate consideration, made and executed their joint and promissory note in writing, bearing date on that date, and delivered the same to the Delta Land & Water Company, a corporation organized and existing under and by virtue of the laws of the State of Utah. By the terms of said note said Friend J. Austin and Lettie M. Austin, his wife, promised to pay the Delta Land & Water Company or order at its office in Milford, Beaver County, Utah, Fifty-five thousand (\$55,000) dollars, in installments

of Five thousand (\$5000) dollars each, payable respectively on or before three, four, five, six and seven years after date, and three additional installments of Ten Thousand (\$10,000) dollars each, payable respectively on or before eight, nine and ten years after date, together with interest payable annually on January 1st of each year commencing with the year 1917, on each and all of said installments, at the rate of six per cent per annum from date thereof until maturity; and promised, further, that if default should be made and continue for thirty days in the payment of any installment of said principal or interest or any part thereof, the unpaid principal of said note and all accrued interest thereon should become immediately due and payable at the option of the legal holder thereof.

2. Said defendants, Friend J. Austin and Lettie M. Austin, his wife, to secure the payment of said promissory note, according to the tenor thereof, did at said time and place execute and deliver to the defendant, Peoples Abstract & Title Company, for the benefit of said Delta Land & Water Company a certain trust deed and mortgage, also bearing date on the 1st day of January, 1916, by the terms of which they transferred and conveyed to the Peoples Title & Abstract Company, as trustee, for the use and benefit of the Delta Land & Water Company, the following described premises, situate in Imperial County, California, to wit:

The East one-half of Section Twenty,
Township Twelve South, Range Fourteen
East, San Bernardino Meridian; containing
320 acres, more or less;

together with three hundred shares of the capital stock of Imperial Water Company No. 3, a corporation organized and existing under the laws of California, evidenced by certificates Nos. 149 and 463 for 150 shares each, which, by the terms of said certificates and by-laws of said water company, are appurtenant to the lands aforesaid.

That said deed of trust was on the uses and terms therein set forth, and a copy of said deed of trust is set out at length in the original bill of complaint herein, and is hereby referred to and made a part of this supplemental bill of complaint with the same force and effect as if copied herein at length.

That said trust deed and mortgage was also signed by the Delta Land & Water Company and by The Peoples Abstract & Title Company on or about the said first day of January, 1916, and the said trust deed and mortgage was duly executed and certified by all of the parties executing the same, so as to entitle it to be recorded, and the said trust deed was afterwards, to-wit, on the 30th day of March, 1916, duly recorded in the office of the County Recorder of the County of Imperial, state of California, in Book 107 of Deeds, page 351.

3. That the said defendants, Friend J. Austin and Lettie M. Austin, his wife, as security for the payment of the said promissory note according to the tenor thereof, did at the same time and place transfer and assign to the Delta Land & Water Company that certain promissory note of the defendant, Annie Marie Belford, dated June 20th, 1914, in the principal sum

of Ten thousand dollars due five years after date, payable to the defendant, *Freind* J. Austin, bearing interest at the rate of eight per cent per annum, payable semi-annually, and the mortgage of said defendant, Annie Marie Belford, securing said promissory note. By said mortgage, the mortgagors mortgaged to the mortgagee real property situate in Imperial County, State of California, to wit:

Northeast quarter of Section 85, Tp. 14 South R. 16 East S. B. M. 160 acres according to plat of survey approved Oct. 18, 1856, being southwest quarter of the northeast quarter, and the southeast quarter of the northwest quarter, Lots 8 and 10, Sec. 3, Tp. 14 South, R. 16 East, S. B. M., California, containing 141.95 acres, according to plat of resurvey approved Nov. 4, 1908, together with one hundred and thirty-four (134) shares of the capital stock of Imperial Water Co. #5 evidenced by certificate #2303 of said Imperial Water Co #5.

TOGETHER with all and singular the tenements, hereditaments and appurtenances thereunto belonging, or in anywise appertaining, and the reversion and reversions, remainder and remainders, rents, issues and profits thereof.

That said note and mortgage are set forth at length in the original bill of complaint herein, and are hereby referred to and made a part hereof with the same force and effect as though copied at this point at length.

That the aforesaid mortgage of the defendant Annie Marie Belford to the defendant Friend J. Austin was recorded on June 22, 1914, in Book 30, page 142, et seq. of mortgages, Imperial County records, California.

4. That said defendants, Friend J. Austin and Lettie M. Austin, his wife, as further security for the payment of said promissory note of January 1st, 1916, according to the tenor thereof, did at the same time and place transfer and assign to the Delta Land & Water Company that certain promissory note of one Joseph Carrick, dated March 3, 1915, for the principal sum of \$12000.00, payable to the order of Friend J. Austin five years after date, with interest at the rate of 8 per cent per annum, payable semi annually, and a mortgage of said Joseph Carrick, a mortgagor, to Friend J. Austin, as mortgagee, upon the southwest quarter of Section 4, Township 12 South, Range 15 East, San Bernardino Meridian, in Imperial County, California, and 150 shares of the stock of Imperial Water Company No. 3, issued to the said Joseph Carrick, and assigned by said Joseph Carrick to the said Friend J. Austin, which said mortgage is recorded in book 35, page 183, mortgages, in said Imperial county records.

5. That thereafter and on or about the 2nd day of January, 1917, the N. and E. J. Allen Company, a corporation, in due course of business, for a valuable and adequate consideration, and prior to maturity, purchased and acquired of and from the Delta Land & Water Company, and the Delta Land & Water Company at said time endorsed, transferred and assigned

to said N. and E. J. Allen Company the aforesaid promissory note executed January 1, 1916, by Friend J. Austin and Lettie M. Austin, and also the aforesaid promissory note and mortgage of the defendant Annie Marie Belford, dated June 20, 1914, and the aforesaid promissory note and mortgage of Joseph Carrick, dated March 3, 1915, and on or about the 5th day of March, 1917, said Frances Investment Company, plaintiff herein, in due course of business prior to maturity and for a valuable consideration purchased and acquired from said N. & E. J. Allen Company the aforesaid notes and mortgages and each of them, and ever since said 5th day of March, 1917, plaintiff has been and now is the lawful owner and holder of said promissory notes and mortgages and each of them. That on or about the date of the assignments thereof to it as aforesaid, the plaintiff duly notified the said Friend J. Austin, Lettie M. Austin, Annie Marie Belford and Joseph Carrick that their respective notes and mortgages had been sold and assigned to it, and on or about the 30th day of November, 1917, the plaintiff notified the defendant The Peoples Abstract & Title Company in writing that the aforesaid promissory note of the defendants Friend J. Austin and Lettie M. Austin had been assigned to it, and that it, the plaintiff, was the lawful owner and holder of same. That on the 30th day of November, 1917, the plaintiff caused to be recorded in Book 5, page 1, of Assignments, Imperial County records, California, the assignment by the Delta Land & Water Company to the plaintiff of the aforesaid promissory note and mortgage of the defendant Annie Marie Belford

hereinbefore set forth, and on the 30th day of November, 1917, caused to be recorded in Book 5, page 2, of Assignments, Imperial County Records, California, the assignment by the Delta Land & Water Company to the plaintiff of the aforesaid note and mortgage of Joseph Carrick.

6. That no part of the principal of said promissory note of the defendants Friend J. Austin and Lettie M. Austin, has been paid, except the sum of \$1965.45, which was paid on account of such interest at or about the time of the purchase of said note by the plaintiff, in consequence whereof this plaintiff has elected to and hereby does declare the principal of said note, together with all accrued and unpaid interest thereon, to be now due and payable.

7. That no part of the principal or interest of said promissory note of the defendant Annie Marie Belford has been paid, except the interest thereon to July 20, 1917, in consequence whereof the plaintiff has elected to, and hereby does, declare the principal of said note, together with the interest thereon from the 20th day of July, 1917, to be now due and payable.

8. That on the 2nd day of October, 1917, the defendants, Friend J. Austin, and Lettie M. Austin, his wife, and the defendants William Martin Belford and Annie Marie Belford, his wife, with intent and design to cheat and defraud the plaintiff out of its security, as aforesaid, did file their verified petition in the office of the Clerk of the Superior Court of the County of Imperial, State of California, praying for a de-

crec of said Court directing the registration of title free and clear from said security under the terms and conditions of that certain law enacted by the people of the State of California, adopted and passed at the general election held on November 3, 1914, entitled "An Act to Amend an Act entitled, 'An Act for the Certification of Land Titles and the Simplification of the Transfer of Real Estate,' approved March 17, 1887," and pursuant to and as a part of their scheme to defraud and injure the plaintiff and the Delta Land & Water Company, and to deceive the said Superior Court of California for the County of Imperial, through their attorney, H. F. Davis, did procure, by false and fraudulent affidavits, from the Honorable Franklin J. Cole, findings of fact and decree, by which the land described in the deed to trust and mortgage aforesaid was registered in the name of said defendants Friend J. Austin and Lettie M. Austin, his wife, and defendants William Martin Belford and Annie Marie Belford, his wife, free and clear of the said deed of trust and mortgages; that said findings of fact and decree were made on the 7th day of December, 1917, and filed in said court, and on the 13th day of December, 1917, a certificate of title, No. 74, under said Act, was issued by the Registrar of said Imperial County, showing title to said property to be vested in said defendant Friend J. Austin and Lettie M. Austin, his wife, as community property.

That the several facts and circumstances and the fraudulent means and methods of the before mentioned defendants are set forth at length in the

original bill of complaint herein, and are hereby referred to and made a part hereof with the same force and effect as if copied herein at this point.

9. That subsequent to the second day of October, 1917, and prior to the 13th day of December, 1917, the defendants William Martin Belford and Annie Marie Belford sold, transferred and conveyed by instrument of conveyance to the defendants Friend J. Austin and Lettie M. Austin all of their right, title and interest in and to the property described in the aforesaid mortgage of Annie Marie Belford of date June 20, 1914, and that the said defendants Friend J. Austin and Lettie M. Austin are now the owners of the legal fee to said property.

10. That the plaintiff herein and the said Delta Land & Water Company, and each of them, have now, and did have during all of the times herein mentioned, a good, sufficient and meritorious defense to the aforesaid action to register title brought by the defendants Friend J. Austin, Lettie M. Austin, Annie Marie Belford and William Martin Belford, hereinbefore set forth, in so far as the same sought to invalidate or injuriously affect the rights and interests of the beneficiary under said trust deed of January 1, 1916, and the rights and interests of the holder of the aforesaid note and mortgage of Annie Marie Belford of date June 20, 1914. That the plaintiff was a bona fide purchaser for value before maturity of the aforesaid note of the defendants Friend J. Austin and Lettie M. Austin of date January 1, 1916, and of the aforesaid promissory note of Annie Marie

Belford and the mortgage securing same of date June 20, 1914; that each and every one of the allegations contained in said application to register title as to false and fraudulent statements and representations alleged to have been made by the Land & Water Company, its agents, servants or employees, to the defendants Friend J. Austin and Lettie M. Austin, or either of them, is false and untrue.

11. That neither the plaintiff nor the Delta Land & Water Company had any knowledge or information of the institution or pendency of the aforesaid action to register title, or of any of the proceedings had or taken therein as hereinbefore set forth, prior to about the 28th day of December, 1917.

12. The plan or scheme to defraud the Delta Land & Water Company and procuring the fraudulent registration of the title to said land as aforesaid, was conceived by the defendant H. F. Davis, and at all times herein mentioned said defendant H. F. Davis acted as the attorney and agent for the defendants Friend J. Austin and Lettie M. Austin, William Martin Belford and Annie Marie Belford, in the furtherance and execution of said plan or scheme.

Said defendant Meryle T. Davis is, and at all times herein mentioned, was the wife of defendant H. F. Davis; that said defendant Jasper Thomason is and at all times herein mentioned was the father of said defendant Meryle T. Davis; and the defendant T. P. Banta is and at all times herein mentioned was the father of the law partner of defendant H. F. Davis; and the defendant John W. Austin is and at all times

herein mentioned was a real estate and mortgage broker, with his office in Los Angeles, California; that said defendant Harry B. Aron is and at all times herein mentioned was associated in business with said defendant John W. Austin; that defendant John Doe, whose true name is Paul H. Marley is and at all times herein mentioned was the father-in-law of said defendant Harry B. Aron, and defendant Jesse Boyd Pilcher is and at all times herein mentioned was a laborer having no financial responsibility.

That on or about December 13, 1917, at Los Angeles, California, defendants H. F. Davis, Meryl J. Davis, John W. Austin, Jesse Boyd Pilcher, John Doe and Jasper Thomason conspired, confederated and agreed between themselves and each other to further said conspiracy, to conceal said funds and assets and to assist in the execution thereof.

13. That on or about the 14th day of December, 1917, said defendants, Friend J. Austin and Lettie M. Austin, his wife, made executed and delivered their deed, by which they conveyed to Jasper Thomason, as his separate property, the southwest quarter of Section 4, Township 12 South, Range 15 East, San Bernardino Meridian; that on said day said deed of conveyance was registered in Torrens Certificate No. 77 in the office of the Registrar of Torrens titles in said County of Imperial, State of California.

That on the 14th day of February, 1918, said Jasper Thomason made and executed his deed, by which he conveyed the last described property to Jesse Boyd Pilcher, as his separate property. That on said day said deed was registered with said Registrar and

Torrens Certificate No. 85, on said property, was issued to said Jesse Boyd Pilcher, by said Registrar.

That on the 11th day of February, 1918, said defendant Jesse Boyd Pilcher had made and executed his mortgage upon said real property to defendant John W. Austin, for the sum of \$8500.00, and said Certificate No. 85 showed said mortgage as an incumbrance on said property.

That on the 15th day of February, 1918, the said defendant Jesse Boyd Pilcher made and executed his deed, by which he conveyed the said property to said defendant Harry D. Aron, as his separate property. That on said day said deed was registered with said Registrar and Torrens Certificate No. 87 on said property was issued to said defendant Harry D. Aron by said Registrar.

That on the 2nd day of October, 1918, defendant John W. Austin assigned said mortgage for \$8500.00 to defendant T. P. Banta, and said Certificate No. 87 showed the said mortgage as assigned to be an incumbrance on said property. Said mortgage was thereafter assigned, on May 5, 1919, by said defendant T. P. Banta to John W. Wolfe, as shown by said Certificate No. 87, and now stands in his name.

That on or about June 23, 1919, defendant Harry D. Aron executed his deed, by which he conveyed said property to defendant Robert B. Walker as his separate property, and said deed was registered in Torrens Certificate No. 120 in the office of the Registrar of Torrens titles in the County of Imperial, State of California.

That on or about December 14, 1917, said defendants Friend J. Austin and Lettie M. Austin, his wife, made and executed their deed, by which they conveyed to defendant Jasper Thomason, as his separate property, the east half of Section 20, Township 12 South, Range 14 east, San Bernardino Meridian. Said deed was registered with said Registrar and Torrens Certificate No. 76 was by him issued to said defendant Jasper Thomason on said property.

That on the 13th day of February, 1918, the said defendant Jasper Thomason transferred said premises to defendants Thomas Edwin Gill and Myra Ritzinger Gill, his wife, as joint tenants. On said day said deed was registered with said Registrar and Torrens certificate No. 84 on said property was issued by said Registrar to said defendants Thomas Edwin Gill and Myra Ritzinger Gill.

That on or about December 14, 1917, said defendants, Friend J. Austin and Lettie M. Austin, his wife, by Torrens Certificate No. 78 in said Imperial County conveyed the Northeast quarter of Section 8, Township 12 South, Range 16 East, to defendant Jasper Thomason, and on the 14th day of February, 1918, said defendant Jasper Thomason, by Torrens Certificate No. 86 in said Imperial County, conveyed said premises to defendant Jesse Boyd Pilcher, and on the 18th day of February, 1918, said Jesse Boyd Pilcher made and executed a mortgage upon said premises in favor of defendant John W. Austin, for the sum of \$5,000.

That on the 15th day of February, 1918, said defendant Jesse Boyd Pilcher, by Torrens certificate No. 88 in said Imperial County, conveyed said property to defendant Harry D. Aron, subject to the aforesaid mortgage of said defendant John W. Austin; that on the 2nd day of March, 1918, said mortgage was assigned by said defendant John W. Austin to defendant Walter Bruce Watt, who on March 4, 1918, assigned the same to the Security Commercial & Savings Bank of El Centro, a corporation, which bank thereafter, on the 30th day of April, 1918, assigned the same to said William H. Watt, and said William H. Watt thereafter and some time prior to January 1, 1920, re-assigned the same to said defendant John W. Austin, and said reassignment is unrecorded.

14. That on or about February 9, 1918, in consideration of the conveyance to them as aforesaid, said defendants Thomas Edwin Gill and Myra Ritzinger Gill conveyed to said defendant Jasper Thomason three parcels of real property, situated in the City of Phoenix, County of Maricopa, State of Arizona, and bounded and particularly described as follows, viz:

Parcel No. 1. Lot 5 in and of Block "13" in and of Collins Addition to the City of Phoenix, according to the plat thereof of record in the office of the County Recorder of Maricopa County, in Book "I" of Maps, Page 11 thereof.

Parcel No. 2. Lots 19 & 20 in and of Block "13" in and of Collins Addition to the City of Phoenix, according to the plat thereof of record in the office of the County Recorder of Maricopa County in Book "I" of Maps page 11 thereof.

Parcel No. 3. Lot 4 in and of Highland Addition to the City of Phoenix, according to the plat thereof of record in the office of the County Recorder of Maricopa County, in Book "2" of Maps page 35 thereof.

Also conveyed to said defendant Jasper Thomason the Southwest quarter of the North half of Tract 47, Township 15 S., R. 14 East, San Bernardino Meridian together with thirty-two shares of the capital stock of Imperial Water Company No. 1; also the Southeast quarter of the north half of Tract 48, Township 15 South, Range 14 East, San Bernardino Meridian, together with thirty-eight shares of the capital stock of Imperial Water Company No. 1, and the deed to the latter property was acknowledged February 11, 1918, and recorded about February 13, 1918, in Book 130 of Deeds, page 375 Records of Imperial County, California.

That on or about February 15, 1918, said defendant Jasper Thomason conveyed said property in Phoenix, Arizona and the property last described by deed of conveyance to said defendant John W. Austin, and the deed to the latter was acknowledged February 16, 1918, and recorded about February 18, 1918, in Book 130 of Deeds, page 411, Records of Imperial County, California.

That on or about May 5, 1919, said property last described was transferred, by said defendant John W. Austin, and said defendant Laura A. Austin by their deed of conveyance, to defendant T. P. Banta, and said deed of conveyance is recorded in book 144 of Deeds, at page 138, Records of Imperial County, Cali-

fornia; and said property now stands of record in the name of said defendant T. P. Banta.

That on or about May 5, 1919, said defendant John W. Austin, by his deed of conveyance, transferred and conveyed said three parcels of real property, situated at Phoenix, Arizona, to defendant John Roe, whose true name is John W. Wolfe, and as a part of said transaction and at the same time said defendant T. P. Banta assigned said mortgage for eight thousand five hundred dollars (\$8,500) to said Wolfe as aforesaid.

That in consideration of said transfer, conveyance and assignment of said Phoenix property and said mortgage to him, said John W. Wolfe conveyed to the defendant Meryle T. Davis the north eighty-one acres of Tract 68, in Township 15 S., R. 13 East, San Bernardino Meridian, together with a certificate representing sixty-five shares of the stock of Imperial Water Company No. 1, and all the stock and personal property on said real property; said conveyance being by deed of conveyance made on or about May 5, 1919, and recorded on said date in book 144 of Deeds, page 134, Records of Imperial County, California.

That on or about November 13, 1919, by deed of conveyance dated October 25, 1919, said defendants H. K. Davis and Meryle T. Davis transferred and conveyed to defendants Wade N. Boyer and Leah A. Boyer the real estate above described, together with said water stock and personal property; said deed of conveyance being recorded in book 153 of Deeds, page 149, records of Imperial County, California; and said

property now stands in the name of said defendants Wade N. Boyer and Leah A. Boyer.

15. That in consideration of the assignment of the mortgage for five thousand dollars (\$5,000) to him as aforesaid, said Walter Bruce Watt conveyed to defendant John W. Austin the following described property, viz:

The West half of the Southwest quarter of the southwest quarter of Section 18, Township 4 South, Range 10 West, San Bernardino Meridian, situated and being in the City of Stanton, County of Orange, State of California; and said Watt further assigned to said defendant John W. Austin an undivided one-half interest to the pumping plant and appurtenances on said property; that said assignment was made on March 1, 1918, and said conveyance was by deed of conveyance dated February 28, 1918, and recorded March 1, 1918, in book of deeds, Vol. 318, page 220, Records of Orange County, California.

That on or about May 6, 1918, defendants John W. Austin and Laura A. Austin, his wife, transferred to defendant Meryle T. Davis by their deed of conveyance, the above described property, and said deed was recorded May 7, 1918, in Book of Deeds, Vol. 319, page 355, Records of Orange County, California, together with an undivided one half interest in said pumping plant.

That on or about November 19, 1919, defendants Meryle T. Davis and H. F. Davis conveyed to Frances R. Wilson and A. M. Wilson, her husband, and Bertha Edgar and W. C. Edgar, her husband, the

property above described, together with an undivided one half interest in and to said pumping plant; that said transfer was by deed of conveyance, dated November 19, 1919, and recorded December 11, 1919, in book 346 of deeds, page 162, records of Orange County.

That said described real property now stands in the names of said Frances R. Wilson and A. M. Wilson, her husband, and Bertha Edgar and W. C. Edgar, her husband.

16. That by the terms of said deed of trust and the said mortgages assigned to said Delta Land & Water Company as aforesaid, it was at all times herein mentioned the duty of the defendants Friend J. Austin, Lettie M. Austin, and their assigns to pay the assessments on shares of water stock pledged as aforesaid; that on or about February 15, 1918, said defendants Friend J. Austin and Lettie M. Austin assigned all their right, title and interest in and to said certificates numbered 149 and 463 to the defendants Thomas Edwin Gill and Myra Ritzinger Gill, and on or about the same date assigned all their right, title and interest in and to said certificates numbered 14 and 2303, to defendant Harry B. Aron and the defendant John Doe, whose true name is Paul H. Marley.

That on or about February 15, 1918, said defendants Friend J. Austin, Lettie M. Austin, Thomas Edwin Gill, Myra Ritzinger Gill, Harry B. Aron and Paul H. Marley conspired and confederated together further to defraud plaintiff, by depriving it of the water stock represented by the aforesaid certificates,

and in order to carry out the same wilfully and fraudulently failed and neglected to pay the assessments that were due or should become due thereon, by reason of which, on or about August 6, 1918, said certificates numbered 149 was sold for non payment of assessments and purchased by said defendants Thomas Edwin Gill and Myra Ritzinger Gill, and said certificate numbered 14 was on the same day sold for non-payment of assessments and purchased by defendant Harry B. Aron.

That further to defraud plaintiff, and on or about February 16, 1918, said defendants Friend J. Austin and Lettie M. Austin, Thomas Edwin Gill and Myra Ritzinger Gill caused said certificate number 463, that stood in the name of Pacific Mutual Life Insurance Company as pledgee for defendant Lettie M. Austin as aforesaid, to be transferred to said Pacific Mutual Life Insurance Company, as pledgee for said defendants Thomas Edwin Gill and Myra Ritzinger Gill.

That further to defraud plaintiff, prior to September 11, 1918, defendants Friend J. Austin and Lettie M. Austin brought suit in the Superior Court of Imperial County, California, in the case numbered 4517 against Imperial Water Company No. 5, alleging in their complaint that said certificate numbered 2303 was lost, and on about the date last mentioned the court entered judgment cancelling said certificate and ordering the issuance of a new certificate in the name of defendant Friend J. Austin; that until about January 1, 1920, plaintiff had no knowledge

whatsoever regarding said suit or judgment; that prior to obtaining said judgment of cancellation said defendants Friend J. Austin and Lettie M. Austin transferred ten shares of water stock, being a portion of the number represented by said certificate numbered 2303, to one H. B. Graeser, for which a certificate was issued by Imperial Water Company No. 5, the further details of said transaction being to plaintiff unknown; that on or about February 25, 1919, the certificate so issued to said Graeser, and the certificate issued to said Friend J. Austin, pursuant to said judgment were cancelled and certificate numbered 3898 of Imperial Water Company No. 5 for one hundred thirty-four (134) shares was issued in lieu thereof to defendant John Doe, whose true name is Paul H. Marley, and said Marley now holds the same.

17. That the aforesaid judgments, orders, transfers, certificates, assignments and conveyances and each of them were made by the defendants and the other persons herein named and each of them with full knowledge of the rights of the plaintiff under the aforesaid deed of trust and mortgages, and with full knowledge that said judgment of registration was procured by fraud as aforesaid, and that all the other acts of defendants, and other persons herein named and each of them, were taken pursuant to said conspiracies as aforesaid, and for the purpose of cheating and defrauding plaintiff of its security, and said defendants Jasper Thomason, T. P. Banta, Jesse Boyd Pilcher and John W. Austin, and each of them, had no financial interest in any of the said transactions

herein mentioned, and acted in all matters herein mentioned only as intermediaries and go-betweens of the other defendants: that on or about May 14, 1917, the Delta Land & Water Company, by an instrument in writing, notified said defendant Friend J. Austin that his note for fifty-five thousand dollars (\$55,000), as aforesaid, and the notes of Annie Marie Belford and Joseph Carrick for ten thousand dollars (\$10,000) and twelve thousand dollars (\$12,000) respectively, as aforesaid, had been transferred and assigned by said company to the N. and E. J. Allen Company, and by the latter company to the plaintiff, Frances Investment Company.

18. That in consideration of the transfers to them as aforesaid said Frances R. Wilson, A. M. Wilson, Bertha Edgar and W. C. Edgar paid to defendants H. F. Davis and Meryle T. Davis the sum of Seven thousand five hundred dollars (\$7,500) in cash, which the said defendants converted to their own uses and purposes and have not paid the same or any part thereof to plaintiff.

That plaintiff is informed and believes and therefore alleges that the transfer to said defendants Wade N. Boyer and Leah A. Boyer as aforesaid, was without consideration and for the purpose of defrauding plaintiff and the other creditors of said defendants H. F. Davis and Meryle T. Davis.

That plaintiff has no information as to whether said transfers to said Aron and said Walker were made with or without consideration.

That in equity and good conscience plaintiff is entitled to the property standing in the names of said defendant T. P. Banta and said defendants Wade N. Boyer and Leah A. Boyer, as aforesaid, the mortgages standing in the names of said defendants John W. Austin and John Roe, whose true name is John W. Wolfe, as aforesaid, and is entitled to have said defendants and each of them account to it for all the moneys, funds and property, both real and personal that they, or any of them, may have or be entitled to as a result of any transaction or transactions connected with the property described in said deed of trust, and said mortgages assigned to said Delta Land & Water Company and said water stock certificates pledged, all as aforesaid, or as a result of any transaction or transactions in the fruits, conversions and reconversions of said property so mortgaged and pledged, or any of it, or of any mortgage or lien thereon.

19. That said defendants and each of them claim to have some right, title, interest or lien, in or upon the above described premises, or some part thereof, as purchasers, mortgagees, judgment creditors, or otherwise, but such right, title, interest, or lien if any they have, are each and all of them subsequent, subject and subordinate to the title, interest and lien of the trust deed and mortgages of plaintiff hereinabove mentioned and to the rights of the plaintiff thereunder, and also to the rights of the plaintiff in equity and good conscience as aforesaid.

WHEREFORE, plaintiff prays that it may have the relief prayed for in its original prayer in the original

bill of complaint herein, and that all of the defendants herein named, and all persons claiming under them subsequent to the execution of the aforesaid deed of trust and mortgages belonging to plaintiff, be barred and forever foreclosed of all rights, claims or equity of redemption on said property conveyed by said deed of trust, and said mortgages and every part thereof.

That defendants be required to surrender up the certificates of water stock, wrongfully acquired by reason of said delinquent sales as aforesaid, and said defendant Imperial Water Company No. 1; said Imperial Water Company # 3, and said Imperial Water Company No. 5, be required to recognize the aforesaid certificates of plaintiff.

That in the event said foreclosures and the return of said water stock cannot be had, that it be adjudged that the defendants and each of them account to the plaintiff for all the moneys, funds and property, both real and personal, that they or any of them may have, or be entitled to as a result of any transaction or transactions connected with the property originally mortgaged and pledged to the Delta Land & Water Company, as aforesaid, or as a result of any transaction, or transactions in the fruits, conversions or reconversions of said property so mortgaged and pledged, or any of it, or of any mortgage or lien thereon.

That defendants and each of them be enjoined, during the pendency of this suit from in any manner disturbing the present status to the above described property, and that a receiver be appointed and put in possession of the above described property during the pendency hereof.

That plaintiff may have such other and further relief in the premises as to this Court may seem meet and equitable.

And may it please your Honors to grant to this plaintiff a writ or writs of subpoena directed to the said defendants named in this amended supplemental bill of complaint who are not named in the original bill of complaint, and each of them issue out of and under the seal of this Honorable Court; thereby commanding them at a certain time and under a certain penalty, therein to be named, personally to be and appear before this Court, then and there civilly to make full and true answer to this amended supplemental bill of complaint not under oath (such answer under oath being hereby expressly waived) and to show cause, if any there be, why the prayer of the bill of complaint herein and of this amended supplemental bill of complaint should not be granted according to the rule and practice of this Court, and to stand, to perform and abide by such order, direction and decree as may be made against them in the premises, and as shall seem meet to equity and good conscience.

And your plaintiff, as in duty found, will ever pray, etc.

Wm Story Jr.

Joseph L. Lewinsohn

Solicitors for Plaintiff.

[Endorsed]: ORIGINAL No. Eq. D-61. United States District Court Southern District of California Southern Division FRANCES INVESTMENT

COMPANY, Plaintiff, vs. FRIEND J. AUSTIN, ET AL., Defendants. AMENDED SUPPLEMENTAL BILL IN EQUITY. Receipt of a copy of the within is hereby admitted this 31 day of March 1920 Joe Crail Duke Stone Atty for part of defts Edwin Gill Myra Gill Attorney....for..... FILED APR. 5, 1920 CHAS. N. WILLIAMS, Clerk By Maury Curtis Deputy WM. STORY, Jr. and JOSEPH L. LEWINSON Second and Hill Streets Los Angeles, Cal. Attorneys for Plaintiff

IN THE DISTRICT COURT OF THE UNITED STATES IN AND FOR THE SOUTHERN DISTRICT OF CALIFORNIA SOUTHERN DIVISION

FRANCES INVESTMENT)	
COMPANY, a corporation,)	
Plaintiff,)	IN EQUITY
vs)	
FRIEND J. AUSTIN, LET-)	
TIE M. AUSTIN, HIS)	Eq. D-61-J
WIFE, WILLIAM MARTIN)	
BELFORD, ANNIE MARIE)	
BELFORD, HIS WIFE.)	NOTICE OF
THE PEOPLES ABSTRACT (	SPECIAL AP-
& TITLE COMPANY, a cor-)	PEARANCE AND
poration, H. F. DAVIS AND)	OF MOTION
MERYLE T. DAVIS, HIS)	TO QUASH SER-
WIFE, JOHN W. AUSTIN)	VICE OF SUB-
AND LAURA A. AUSTIN,)	POENA, ETC.
HIS WIFE, JASPER)	
THOMASON, JESSE BOYD)	
PILCHER, THOMAS ED-)	
WIN GILL AND MYRA)	
RITZINGER GILL, HIS)	

WIFE, HARRY D. ARON,)
T. P. BANTA, ROBERT)
B. WALKER, JOHN DOE,)
RICHARD DOE JOHN)
ROE, RICHARD ROE,)
SARAH DOE, JANE DOE,)
SARAH ROE, JANE ROE,)
A-1 COMPANY, a corpora-)
tion, B-1 COMPANY, a cor-)
poration, C-1 COMPANY, a)
corporation, I M P E R I A L)
WATER COMPANY NO. 1,)
IMPERIAL WATER COM-)
PANY NO. 3, IMPERIAL)
WATER COMPANY NO. 5,)
WADE N. BOYER and)
LEAH A. BOYER, his wife,)
Defendants.)

TO THE PLAINTIFF IN THE ABOVE EN-
TITLED ACTION AND TO WILLIAM
STORY, JR., ESQUIRE, AND JOSEPH L.
LEWINSOHN, ESQUIRE, ATTORNEYS FOR
SAID PLAINTIFF:

YOU, AND EACH OF YOU, WILL PLEASE
TAKE NOTICE, that the defendant Jasper Thoma-
son has appeared specially and does hereby appear
specially in the above entitled action through the
undersigned, his solicitors, for the sole purpose of
making the motion hereinafter mentioned; that the
said Jasper Thomason has not appeared generally and
does not appear generally in this action; and that the
said defendant so appearing specially will, through
the undersigned, his solicitors, move the above named
Court before the Honorable WILLIAM P. JAMES,
to whom this cause has been reassigned, at his court

room in the Federal Building, Los Angeles, California, on the 20th day of April, 1925, at the hour of 10 o'clock A. M., or as soon thereafter as counsel can be heard, for an order quashing service of subpoena upon the said defendant in the above entitled action, vacating and setting aside that certain order Pro Confesso made in the above entitled action on the 12th day of October, 1923, and vacating and setting aside as to the said defendant Thomason, that certain "Final Decree" entered in the said cause on the 24th day of March, 1925, all upon the ground that this court has not now and never has had jurisdiction over the person of the said defendant.

Said motion will be based upon this notice of motion, the said special appearance heretofore entered herein by the clerk of this court, the annexed affidavits of Jasper Thomason, Rosamond Mildred Hunt and Nellie M. Thomason, each of which was verified on the 7th day of April, 1925; the alias subpoena on amended supplemental bill of complaint herein, the returns of service of the said subpoena made herein by W. S. Walton and dated respectively, May 13, 1921, October 4, 1923 and October 5, 1923, being the only returns of service of subpoena upon the said defendant Thomason, and upon the said order Pro Confesso made and entered herein on the 12th day of October, 1923, and the said "Final Decree" made and entered herein on the 24th day of March, 1925, and upon all of the clerk's record and the papers and files in the above entitled proceeding which may have any relevancy to or bearing upon the said motion, and the said motion will be made upon the grounds that no subpoena in the

said cause was ever delivered to the defendant personally and that the only service or attempted service of subpoena herein was made by leaving a copy thereof with Rosamond Mildred Thomason on the 13th day of May, 1921, at a time when the said Rosamond Mildred Thomason was under the age of 18 years and was not an adult person, and that no service or attempted service of subpoena herein was made upon any other person or at any other time than upon the said Rosamond Mildred Thomason on said 13th day of May, 1921. That said defendant Jasper Thomason has not heretofore been served in the manner required by law with subpoena in this action nor has he voluntarily appeared herein nor has he waived due service of process upon him, and that the court is now and has been at all times without jurisdiction over the person of the said defendant Thomason, who has appeared and who appears herein solely and only for the purpose of making the said motion on the said ground of want of jurisdiction over his person.

Dated this 15th day of April, 1925.

WM. T. KENDRICK

NEWLIN & ASHBURN

Solicitors for said Defendant so appearing specially
herein.

IN THE DISTRICT COURT OF THE UNITED
STATES, SOUTHERN DISTRICT OF CALI-
FORNIA, SOUTHERN DIVISION.

FRANCES INVESTMENT)
COMPANY,)
a corporation,)
Plaintiff,)

vs.)

FRIEND J. AUSTIN, LET-)
TIE M. AUSTIN, HIS)
WIFE, WILLIAM MARTIN)
BELFORD, ANNIE MARIE)
BELFORD, HIS WIFE,)
THE PEOPLES ABSTRACT)
& TITLE COMPANY, a cor-)
poration, H. F. DAVIS AND)
MERYLE T. DAVIS, HIS)
WIFE, JOHN W. AUSTIN)
AND LAURA A. AUSTIN,)
HIS WIFE, JASPER THOM-)
ASON, JESSE BOYD PIL-)
CHER, THOMAS EDWIN)
GILL AND MYRA RITZ-)
INGER GILL, HIS WIFE,)
HARRY D. ARON, T. P.)
BANTA, ROBERT B.)
WALKER, JOHN DOE,)
RICHARD ROE, SARAH)
DOE, JANE DOE, SARAH)
ROE, JANE ROE, A-1 COM-)
PANY, a corporation, B-1)
Company, a corporation, C-1)
COMPANY, a corporation,)
IMPERIAL WATER COM-)
PANY NO. 1, IMPERIAL)
WATER COMPANY NO. 3,)
IMPERIAL WATER COM-)

IN EQUITY

Eq. D-61-J

AFFIDAVIT IN
SUPPORT OF
MOTION TO
VACATE
JUDGMENT.

PANY NO. 5, WADE N.)
BOYER and LEAH A.)
BOYER, his wife,)
Defendants.)

UNITED STATES OF AMERICA,)
)SS.
SOUTHERN DISTRICT OF CALIFORNIA)

JASPER THOMASON, being first duly sworn, deposes and says:

That he is the Jasper Thomason who is named as a party defendant in the above entitled action and against whom the court awarded, or purported to award, to plaintiff certain relief in that certain "Final Decree", which was entered in the above entitled action on the 24th day of March, 1925. That no order was made by the above entitled court specially appointing or authorizing any person other than the Marshal of the District, or his deputy, to make service of subpoena herein. That the said Marshal did not, nor did any of his deputies, on the 13th day of May, 1921, or at any other time, deliver to affiant a copy of any subpoena issued in the above entitled action, and particularly was no copy of the alias subpoena issued herein on the Amended Supplemental Bill of Complaint under date of May 9, 1921, ever delivered to affiant by the said Marshal or any of his said deputies, and affiant was not present at the time of delivery of copy of any subpoena to his daughter, Roasmond Mildred Thomason; that affiant has at no time appeared in person or through attorney or solicitor in this action and has not heretofore authorized any attorney or solicitor to appear for him herein. That on the said 13th day

of May, 1921, affiant had only four (4) daughters, and all of the said daughters had been married prior to the said date, except Rosamond Mildred Thomason, whose name now is Rosamond Mildred Hunt. That the said Rosamond Mildred Hunt is a daughter of affiant and Nellie M. Thomason, having been married to one Theodore G. Hunt subsequent to May 13, 1921. That on the said last mentioned date the said Rosamond Mildred Thomason was the only person who was a member of the family of affiant, or a resident in the said family, who was or could properly be known by the name of Miss Thomason. That the said Rosamond Mildred Thomason was born in the County of Los Angeles, State of California, on the 17th day of December, 1903, and not before. That there is attached hereto and made a part hereof with the same force and effect as if herein set forth in full, an abstract from the records of Births of the County of Los Angeles, California, which has been duly certified by the Deputy County Recorder of said county, and which is marked "Exhibit A". That the said Rosamond Mildred Thomason was not on the said 13th day of May, 1921, or at any time prior to the 17th day of December, 1921, an adult person.

This affidavit is made for the purpose of enabling affiant to make a special appearance in the above entitled action through Wm. T. Kendrick, Esq., and Newlin & Ashburn, Esqs., who are hereby designated as his solicitors, for the said purpose, which said special appearance shall be made for the sole purpose of moving this court to quash service of subpoena herein

and vacate and set aside the Order Pro Confesso made herein on October 12th, 1923, and to vacate and set aside as to this defendant the "Final Decree" entered herein on the 24th day of March, 1925, upon the ground that the said court has not and at no time has had jurisdiction over the person of this affiant.

WHEREFORE, affiant prays for leave to make such special appearance for said purpose through his solicitors herein, and prays that the said service of subpoena be quashed, the said Order Pro Confesso and said "Final Decree", and each of them, be vacated and set aside as to this defendant upon the said ground that this court has no jurisdiction and has not at any time had jurisdiction over the person of this defendant.

Jasper Thomason

Subscribed and sworn to before me this 7 day of April, 1925.

Charles A. Eagler

Notary Public in and for the County of Los Angeles,
State of California.

My Commission Expires Oct. 9, 1927

(Seal)

"EXHIBIT A"

CERTIFICATE OF BIRTH

County Recorder's Office, Los Angeles County,
California

Date April 6, 1925.

Name of Father Jasper Thomason

Maiden name of Mother Nellie M. Harris

Name of Child Rosamond Mildred Thomason

Date of Birth Dec. 17, 1903

Race White Sex Female Condition at Birth Alive
Parentage American.

I CERTIFY that the above is a true abstract from the records of Births, Book 4 Page 342-3 of Los Angeles County, Cal.

C. L. Logan

County Recorder, Los Angeles
County, Cal.

By B. M. Sanford,

Deputy.

IN THE DISTRICT COURT OF THE UNITED
STATES SOUTHERN DISTRICT OF
CALIFORNIA, SOUTHERN
DIVISION.

FRANCES INVESTMENT)	
COMPANY, a corporation,)	
Plaintiff,)	IN EQUITY
vs.)	
FRIEND J. AUSTIN, LET-)	Eq. D-61-J
TIE M. AUSTIN, HIS)	
WIFE, WILLIAM MAR-)	
TIN BELFORD, ANNIE)	AFFIDAVIT IN
MARIE BELFORD, HIS)	SUPPORT OF MO-
WIFE, THE PEOPLES)	TION TO VACATE
ABSTRACT & TITLE)	JUDGMENT
COMPANY, a corporation,)	
H. F. DAVIS AND)	
MERYLE T. DAVIS, HIS)	
WIFE, JOHN W. AUSTIN)	
AND LAURA A. AUSTIN,)	
HIS WIFE, J A S P E R)	

THOMASON, J E S S E)
 B O Y D P I L C H E R,)
 THOMAS EDWIN GILL)
 AND MYRA RITZINGER)
 GILL, HIS WIFE, HARRY)
 D. ARON, T. P. BANTA,)
 ROBERT B. WALKER,)
 JOHN DOE, RICHARD)
 DOE, JOHN ROE, RICH-)
 ARD ROE, SARAH DOE,)
 JANE DOE, SARAH ROE,)
 JANE ROE, A-1 COM-)
 PANY, a corporation, B-1)
 COMPANY, a corporation,)
 C-1 COMPANY, a corpora-)
 tion, IMPERIAL WATER)
 COMPANY NO. 1, IMPE-)
 RIAL WATER COMPANY)
 NO. 3, IMPERIAL WATER)
 COMPANY NO. 5, WADE)
 N. BOYER AND LEAH A.)
 BOYER, HIS WIFE,)
 Defendants.)

UNITED STATES OF AMERICA,)
)SS
 SOUTHERN DISTRICT OF CALIFORNIA.)

ROSAMOND MILDRED HUNT, being first duly sworn, deposes and says:

That she is the daughter of Jasper Thomason, who is named as one of the defendants in the above entitled action. That her mother's name is Nellie M. Thomason. That affiant was subsequent to May 13th, 1921, married to Theodore G. Hunt. That affiant's maiden name was Rosamond Mildred Thomason, and said last mentioned name was her name on the 13th day of May, 1921. That affiant's father and mother had at said time four (4) daughters, and no more. That on said date all of the said daughters, except

affiant, had been married, and affiant was the only daughter or the only person who was then a member of her father's family, or a resident in the said family, who was known as Miss Thomason, or who could properly be known as Miss Thomason. That on the said 13th day of May, 1921, one W. S. Walton, who, as affiant is informed and believes, was at that time Deputy United States Marshal for the Southern District of California, delivered to her a copy of the Alias Subpoena upon Amended Supplemental Bill of Complaint in the above entitled action, and that the said copy of subpoena was not, nor was any copy thereof so far as affiant knows, delivered by the said Walton to her father, Jasper Thomason. That the said Jasper Thomason was not present at the time of the delivery of the said copy of subpoena to affiant, and no other copy of subpoena in the said action was on said day or at any other time ever delivered to affiant. That affiant was born on December 17th, 1903, and not before, and was not on the said 13th day of May, 1921, an adult person.

Rosamond Mildred Hunt

Subscribed and sworn to before me
this 7th day of April, 1925.

Charles E. Eagler

Notary Public in and for the County of Los Angeles,
State of California.

My commission Expires Oct. 9, 1927.

(Seal)

IN THE DISTRICT COURT OF THE UNITED STATES SOUTHERN DISTRICT OF CALIFORNIA, SOUTHERN DIVISION.

FRANCES INVESTMENT)
COMPANY,)
a corporation,)
Plaintiff,)

vs.)

FRIEND J. AUSTIN, LET-)
TIE M. AUSTIN, HIS)
WIFE, WILLIAM MAR-)
TIN BELFORD, ANNIE)
MARIE BELFORD, HIS)
WIFE, THE PEOPLES)
ABSTRACT & TITLE)
COMPANY, a corporation,)
H. F. DAVIS AND)
MERYLE T. DAVIS, HIS)
WIFE? JOHN W. AUSTIN,)
AND LAURA A. AUSTIN,)
HIS WIFE, JASPER)
THOMASON, JESSE)
BOYD PILCHER, THOM-)
AS EDWIN GILL AND)

IN EQUITY

EQ. D-61-J

MYRA RITZINGER GILL,)
HIS WIFE, HARRY D.)
ARON, T. P. BANTA, ROB-)
ERT B. WALKER, JOHN)
DOE, RICHARD DOE,)
JOHN ROE, RICHARD)
ROE, SARAH DOE, JANE)
DOE, SARAH ROE, JANE)
ROE, A-1 COMPANY, a cor-)
poration, B-1 COMPANY, a)
corporation, C-1 COMPANY,)
a corporation, IMPERIAL)
WATER COMPANY NO. 1,)
IMPERIAL WATER COM-)
PANY NO. 3, IMPERIAL)

AFFIDAVIT IN
SUPPORT OF
MOTION TO
VACATE
JUDGMENT.

WATER COMPANY, NO.)
 5, WADE N. BOYER AND)
 LEAH A. BOYER, HIS)
 WIFE,)
 Defendants.)

UNITED STATES OF AMERICA)
) SS
 SOUTHERN DISTRICT OF CALIFORNIA,)

NELLIE M. THOMASON, being first duly sworn,
 deposes and says:

That she is and at all times hereinafter mentioned has been the wife of Jasper Thomason, who is named as one of the defendants in the above entitled action. That affiant and Jasper Thomason have, and on May 13th, 1921, had, four (4) daughters, and no more. That one of the daughters is now named Rosamond Mildred Hunt. That her maiden name was Rosamond Mildred Thomason. That all of the daughters of the said Jasper Thomason and of affiant, except the said Rosamond Mildred Thomason, were married prior to May 13th, 1921, and none of them except the said Rosamond Mildred Thomason was known as Miss Thomason, and none of them could properly be known as Miss Thomason on said date except the said Rosamond Mildred Thomason. That said Rosamond Mildred Thomason was born in the County of Los Angeles, California, on December 17th, 1903, and not prior to said date, and the said Rosamond Mildred Thomason was not on May 13th, 1921, an adult person, and there was not on said date any other person who was a member of the family of the said Jasper Thomason, or a resident in the said family, who was

known or could properly be known as Miss Thomason, except the said Rosamond Mildred Thomason.

Nellie M. Thomason

Subscribed and sworn to before me this 7 day of April, 1925.

Charles E. Eagler

Notary public in and for the County of Los Angeles, State of California.

My Commission Expires Oct. 9, 1927

(Seal.)

[Endorsed]: IN EQUITY No. Eq. D-61-J In the UNITED STATES DISTRICT COURT, In And For The SOUTHERN DISTRICT OF CALIFORNIA, Southern Division FRANCES INVESTMENT COMPANY, a corporation, Plaintiff vs. FRIEND J. AUSTIN, et al., Defendants Affidavits and NOTICE OF SPECIAL APPEARANCE AND OF MOTION TO QUASH SERVICE OF SUBPOENA, ETC. Received copy of the within affidavits and notice this 15th day of April 1925 Lewinson & Barnhill Attorneys for Plaintiff FILED APR 15 1925 CHAS N WILLIAMS, Clerk By Edmund L. Smith Deputy Clerk Wm. T. Kendrick & NEWLIN & ASHBURN 935 Title Insurance Building Telephone Main 0159 Los Angeles, Cal. Attorneys for Defendant Jasper Thomason, Appearing Specially

IN THE DISTRICT COURT OF THE UNITED
STATES IN AND FOR THE SOUTHERN
DISTRICT OF CALIFORNIA SOUTH-
ERN DIVISION

FRANCES INVESTMENT)	IN EQUITY
COMPANY,)	Eq. D-61-J
a corporation,)	MEMORANDUM
)	OF POINTS AND
Plaintiff,)	AUTHORITIES IN
)	SUPPORT OF
vs.)	MOTION TO
)	QUASH SERVICE
FRIEND J. AUSTIN, et al.,)	OF SUBPOENA,
)	ETC.
Defendants.))

POINT 1.

The court did not acquire jurisdiction over the person of defendant Thomason.

Federal Equity-Rules 13 and 15;
California Civil Code, Sections 25, 26 and 27;
1 Street's Federal Equity Practice, Sec. 595;
Blythe vs. Hinckley, 84 Fed. 228;
Gage vs Riverside Trust Co., 156 Fed. 1002;
34 Corpus Juris, page 899; sec. 310;
Rose's Code of Federal Procedure, Sec. 970,
page 927.

Special appearance and motion to quash is proper method of raising question of jurisdiction over person.

1 Street's Federal Equity Practice, Sections
650, 665, and 662;
Simkins Federal Practice, page 599;
S. P. Co. vs. Arlington Heights Fruit Co., 191
Fed. 101;

Wall vs C. & O. Ry. Co., 95 Fed. 398, 401;
Peper Auto Co. vs. American Motor Etc. Co.,
180 Fed. 245;

1 Foster's Federal Practice, Section 167a.

Respectfully submitted,
Wm. T. KENDRICK
NEWLIN & ASHBURN

Solicitors for defendant Jasper Thomason appearing
specially herein.

Service admitted 15th of April 1925

Lewinson & Barnhill

Attys for plff.

Filed Apr 15 1925 Chas N Williams By Edmund
L Smith

IN THE DISTRICT COURT OF THE UNITED
STATES, IN AND FOR THE SOUTHERN
DISTRICT OF CALIFORNIA.

FRANCES INVESTMENT)
COMPANY, a corporation,) No. D-61-J Equity.
)
Plaintiff,)
)
vs.) AFFIDAVIT.
)
FRIEND J. AUSTIN, et al,)
)
Defendants.)

UNITED STATES OF AMERICA)
) ss
SOUTHERN DISTRICT OF CALIFORNIA.)

A. W. ASHBURN, being first duly sworn, deposes
and says:

That he is one of the solicitors for the defendant Jasper Thomason, appearing specially herein; that the said defendant's motion to quash service of subpoena, etc., was originally noticed for a hearing on April 20th, 1925; that on or about the 17th day of April, 1925, Mr. Joseph L. Lewinsohn, one of the solicitors for the plaintiff, telephoned deponent and explained that he had been so busy with other matters that he had not prepared, and would not have an opportunity to prepare, the matter of the said motion so that he could present the same on the 20th of April, but that he could and would be prepared to present the same on the 27th of April, if deponent would consent to a continuation of said motion; that deponent, after conferring with his associate counsel, informed the said Lewinsohn that he would consent to the said continuation, and deponent was assured by the said Lewinsohn that he would be ready to go ahead on April 27th, and said cause was thereupon continued to said last mentioned date; that on Thursday, April 23rd, the said Lewinsohn again telephoned deponent and stated that he had discovered that he had an action set for trial before a jury in the Superior Court of Los Angeles County on Monday, April 27th; that it would be impossible for him to take care of said motion on said date; that he would like to have the matter continued for one week, but he would also be willing to endeavor to have the same set for hearing on the morning of Saturday, April 25th; that deponent, after conferring with associate counsel, telephoned said Lewinsohn that he did not feel justified in agreeing to a

continuation of said hearing for one week after April 27th, but would be willing to have the matter set for hearing on Saturday, April 25th. Whereupon, said Lewinsohn stated that he could not do that because he would be unable to prepare the matter by that date, but if deponent was unable to agree to a continuance he would have some person present on Monday, April 27th, to present the matter as best he could and to ask leave to submit authorities in opposition to the motion; that nothing further was heard from said Lewinsohn until Saturday, April 25th, when deponent was served with affidavit and notice of motion for continuance. Deponent had an action set for trial in the Superior Court of Los Angeles County on Friday, April 24th, which said action was ready for trial but could not be reached by the court; that deponent explained to the court that he had the above entitled matter set for hearing on Monday, April 27th, and the court, for the purpose of enabling deponent to take care of the said matter, continued the said action until Tuesday, April 28th, instead of Monday, April 27th.

Further affiant saith not.

A. W. Ashburn

Subscribed and sworn to before me this 27th day of April, 1925.

(Seal)

.....

Notary Public in and for the County of Los Angeles,
State of California.

Chas. N Williams, Clerk U. S. District Court South-
ern District of California by R. S. Zimmerman, Deputy.

[Endorsed]: No. D-61-J (Equity) IN THE United States District Court IN AND FOR THE SOUTHERN DISTRICT OF CALIFORNIA, SOUTHERN DIVISION FRANCES INVESTMENT COMPANY, a corporation, Plaintiff vs. FRIEND J. AUSTIN, et al, Defendants AFFIDAVIT. Received copy of the within Affdt this 27 day of April 1925 Joseph L. Lewinson and Wm Story Jr, Attorney for FILED APR 27 1925 CHAS N WILLIAMS Clerk By L. J. Cordes Deputy Clerk W. T. KENDRICKS, and NEWLIN & ASHBURN 935 Title Insurance Building Telephone Main 0159 Los Angeles, Cal. Attorneys for deft. Jasper Thomason, Appearing Specially.

IN THE DISTRICT COURT OF THE UNITED STATES IN AND FOR THE SOUTHERN DISTRICT OF CALIFORNIA SOUTHERN DIVISION

FRANCES INVESTMENT	(	IN EQUITY.
COMPANY,	)	Eq. D-61-J.
a corporation,	(	MEMORANDUM
	)	OF POINTS AND
	Plaintiff, (	AUTHORITIES IN
vs	)	OPPOSITION TO
	(	MOTION TO
FRIEND J. AUSTIN, et al.,	)	QUASH SERVICE
	(	OF SUBPOENA,
Defendants.	)	ETC.

Plaintiff respectfully submits the following points and authorities in opposition to the motion of defendant, Jasper Thomason, for an order quashing service of subpoena upon said defendant and vacating and set-

ting aside the order Pro Confesso made on October 12, 1923, and vacating and setting aside as to said defendant the Final Decree entered on March 24, 1925:

The grounds of defendant's motion are stated to be:

“that no subpoena in the said cause was ever delivered to the defendant personally and that the only service or attempted service of subpoena herein was made by leaving a copy thereof with Rosamond Mildred Thomason on the 13th day of May, 1921, at a time when the said Rosamond Mildred Thomason was under the age of 18 years and was not an adult person, and that no service or attempted service of subpoena herein was made upon any other person or at any other time than upon the said Rosamond Mildred Thomason on said 13th day of May, 1921. That said defendant Jasper Thomason has not heretofore been served in the manner required by law with subpoena in this action nor has he voluntarily appeared herein nor has he waived due service of process upon him, and that the court is now and has been at all times without jurisdiction over the person of the said defendant Thomason. * * *”

It is well settled that a motion of this character must definitely point out the defects in the service, and nothing beyond the scope of the motion will be considered.

Bankers' Surety Co. v. Town of Holly, 219 Fed. 96
Any argument upon the motion is therefore limited to the grounds stated in the notice of motion.

I.

THE AMENDED RETURN OF THE MARSHALL
IS CONCLUSIVE UPON THIS DEFENDANT.

The Amended Return of the Marshall made (upon
leave of the Court) on October 4, 1923 is as follows:

Amended Return	UNITED STATES
Frances Investment Co.	MARSHAL'S OFFICE
vs.	D.61
Friend J. Austin et al	SOUTHERN DIS-
	TRICT OF CALI-
	FORNIA.

I hereby certify and return, that I received the
within writ on the 9th day of May, 1921, and
personally served the same on the 13th day of
May, 1921, on Jasper Thomason by delivering to
and leaving with Miss Thomason, an adult person,
who is a member or resident in the family of
Jasper Thomason, said defendant named herein,
at the County of Los Angeles, in said district, an
attested copy thereof, at the dwelling house or
usual place of adode of said Jasper Thomason, one
of the said defendants herein.

C. T. WALTON

U. S. MARSHALL

By W. S. WALTON

DEPUTY

LOS ANGELES, CALIFORNIA

October 4, 1923.

This return complies in all respects with Federal
Equity Rule 13, which is as follows:

“The service of all subpoenas shall be by delivering a copy thereof to the defendant personally, or by leaving a copy thereof at the dwelling-house or usual place of abode of each defendant, with some adult person who is a member of or resident in the family.”

The return of the Marshall is, moreover, complete and self-supporting. Under these circumstances the return is conclusive upon this defendant. The following authorities are directly in point.

Joseph v. New Albany Steam Mill Co., 53 Fed.

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This was a suit to foreclose a pledge of choses in action and for other equitable relief. A subpoena in chancery was issued to the marshal, upon which he made a return to the effect that he had served the same upon one, John Marsh, agent of the defendant in custody of its property and in charge of its office. (A copy of the return is set forth in the opinion.) The defendant moved to quash this return on the ground that said Marsh was not its agent or in its employ at the time the writ was served. This motion was overruled. The Court (Circuit Court for the District of Indiana) says in the course of its opinion:

“Whatever may be the rule in other states in regard to the effect of the return of an officer in executing mesne or final process, I think it is the settled law in this state that the return of a sheriff showing that he has served the writ in the manner prescribed by the statute, for the purpose of giving the court jurisdiction, is conclusive against a col-

lateral attack. *Smith v. Noe*, 30 Ind. 117; *Rowell v. Klein*, 44 Ind. 290; *Splahn v. Gillespie*, 48 Ind. 397; *Johnson v. Patterson*, 59 Ind. 237; *Stockton v. Stockton*, Id. 574; *Hite v. Fisher*, 76 Ind. 231; *Hume v. Conduitt*, Id. 598; *Birch v. Frantz*, 77 Ind. 199; *Johnson, etc., Co. v. Bartley*, 81 Ind. 406; *Coan v. Clow*, 83 Ind. 417; *Krug v. Davis*, 85 Ind. 309; *Nichols v. Nichols*, 96 Ind. 433; *Nietert v. Trentman*, 104 Ind. 390, 4 N. E. Rep. 306. It is argued that while the return may be conclusive for the purpose of conferring jurisdiction, where the facts stated in the return are within the personal knowledge of the officer, it ought not to have such conclusive effect where the facts stated in such return presumably rest upon information derived from others. In my opinion, where the facts stated in the return are such as the law requires the officer to ascertain and return under his oath of office, the manner in which he has ascertained the facts is immaterial. In every instance of the personal service of process, the officer must determine that the person served is the identical person named in his writ. So, where service is made by copy left at the defendant's last and usual place of residence, the officer must determine the identity of the party, and that the place where the copy is left is the last and usual place of residence of such party. The law has imposed the duty of ascertaining these facts upon the sheriff, and whether he finds and returns the facts from personal knowledge, or otherwise it makes no difference in the rule of law.

Splahn v. Gillespie, 48 Ind. 397; *Hite v. Fisher*, 76 Ind. 231. If it were open to a party to contradict the sheriff's return collaterally, in every case where the facts returned by him did not lie within his personal knowledge, it would open the door to endless conflict and confusion. The law in this state is firmly settled that the facts which the sheriff is required by law to ascertain and return in obedience to his writ, when so ascertained and returned by him, cannot be impeached collaterally, by a resident of the state, for the purpose of quashing the service and return and ousting the court of jurisdiction, by showing that the facts exhibited in the return are untrue."

Von Roy v. Blackman, Fed. Cas. No. 16,997.

This was a suit in equity in which defendant by plea in abatement objected to the sufficiency and legality of the service of process upon her. The Court (Circuit Court, District of Louisiana) in declaring the plea bad, says:

"The authorities are numerous and weighty in support of the proposition, that in the same case the parties cannot question the return of the officer: *Benn & H. Dig. tit. 'Officer,' subd. 5*; *Id. 'Return of Officers'*; *Lawrence v. Pond*, 17 Mass. 432; *Com. Dig. tit. 'Return,' F, 2*; *Barr v. Satchwell*, 2 Strange, 813; 2 Phil. Ev. (Ed. 1859, Cowan & Hill's Notes) 370; 3 Bouv. Inst. 190, 2795; *Cow. Treat*, 335 art. 867; *Goubot v. De Crouy*, 1 Crompt & M 773; *Putnam v. Man*, 3 Wend. 202; *Case v. Redfield*, 7 Wend. 399; *Evans v. Parker*,

20 Wend 622. I have endeavored to find cases which would support the proposition urged by the defendant, that where a fact involving an opinion was returned by the sheriff, there might be an exception to the rule that the return could not be denied. But the principle seems to be settled, that as to parties and privies, the return of the sheriff, as to any fact which he was bound to return, is conclusive. In *Lawrence v. Pond*, supra, the return was as to the qualifications of the appraisers of land taken on exception. In *Goubot v. De Crouy*, 1 Crompt. & M. 772, the return was 'that the defendant was and yet is in the service of the Sicilian minister at the British court as a domestic servant.' Busby moved to set aside the return on strong affidavits, showing fraud and collusion between the sheriff's officer and the defendant; that the defendant was in trade; that he had said he was endeavoring to get attached to the embassy; that he had been taken and collusively discharged by the officer. The court says: 'We cannot interfere upon motion, your only course is by bringing an action against the sheriff for false return.' In *Case v. Redfield*, supra, evidence was offered that a copy of the attachment was not left at the dwelling-house, or last place of abode of the defendant and it was excluded. In the case of *Van Rensselaer v. Chadwick*, 7 How. Prac. 297, the court seems to hold that the return of the sheriff is not conclusive, and may be contradicted. This would be in opposition to the

other cases which I find, and they are so numerous that I have no doubt upon the subject. In the case of *Earle v. McVeigh*, 91 U. S. 503, I am satisfied that the decision, so far as it involves the question here presented, was based upon the ground that the impeachment of the return was in a second suit. The plea is therefore bad, since it traverses the return of the marshal in the same cause in which it is made."

Trimble v. Erie Electric Motor Co., 89 Fed. 51, accord.

The rule thus laid down to the effect that the return of the marshal is, in a case of this character, conclusive upon the defendant, is subject to qualifications. A number of cases holding to the contrary are to be distinguished upon one of the following grounds: (1) Either the return of the marshal was not itself complete and self-supporting upon its face, or (2) the defendant was not in fact actually within the jurisdiction of the Court at the time of the attempted service. But in the case at bar neither of these circumstances existed. As already pointed out the amended return of the marshal was entirely complete and self-supporting upon its face. Moreover, at the time of the service of the subpoena (May 13, 1921), defendant, Thomason, was in fact within the territorial jurisdiction of this Court.

The affidavit of Meryle Thomason Davis, daughter of Jasper Thomason, filed herein in opposition to the motion of plaintiff for a continuance of the hearing of this defendant's motion to quash affirms that on Janu-

ary 23, 1920, this defendant resided at No. 336 East Orange Grove Avenue, Pasadena, California, and continued to reside at that place until on or about September 1, 1920, when he changed his residence to No. 1743 Eighth Street, Santa Monica, California, where he resided until on or about November 1, 1921; “that during all the time aforesaid * * * said Thomason was continuously at his said residences respectively and could have been served with process during any of said time.”

That decisions holding that the return of the marshal is not conclusive are to be distinguished upon these grounds is apparent from an examination of decisions touching this point. In Joseph v. New Albany Steam Mill Co. (cited above) the Court takes occasion to point out:

“If the facts were falsely returned by the officer, knowingly or corruptly, with the privity or consent of the plaintiff, or if the plaintiff was a nonresident of the state, a different rule of law might apply; * * *

(Italics ours.)

So also in Nickerson v. Warren City Tank Co., 223 Fed. 843, which arose upon a motion to set aside service of process, the Court (District Court, Eastern District of Pennsylvania) in the course of its opinion, says:

“Two facts are essential to a good service of process. One is the actual or constructive presence of the defendant within the jurisdiction. The other is a service made in the legal mode or manner prescribed.

* * * * *

The basis of a return of service thus being a fact or facts, there is in every question of its sufficiency the accompanying query of how the facts are to be determined and by whom they are to be found. Take the case of a defendant returned as served and without other complicating circumstances. The one fact here is the simple one of whether it was the defendant who was served, or whether he was in fact served. Necessarily, in the first instance, at least, the marshal or other officer must determine the fact. This finding he makes in his return. Necessarily, again, the fact at least *prima facie*, must be as returned. If the fact be challenged, and the real defendant denies he was served, we come to the intermediate query of how the question of fact can be raised or the remedy at the command of a defendant so circumstanced. One remedy which suggests itself is an action against the marshal for a false return. Another is a plea in abatement. Still another, at least possible one, is a motion to quash the return or to set aside the service. Out of the choice of possible remedies arises this preliminary question. The earlier cases in Pennsylvania laid down the doctrine that the return of the sheriff could not be questioned, but for the purpose of bringing the defendant into court was conclusive, and, as it must be accepted as verity, the defendant was remitted to his plea in abatement or his action for a false return. This rule has, however,

latterly been somewhat relaxed, and the principle has been modified, at least to the extent that where the return of the sheriff is not in itself complete, in the sense of not being wholly self-supporting, there a motion would be entertained, and the facts inquired into and determined by the court. This modification implied the converse, that when the return is complete and self-supporting the old rule still pertains. The rulings have nevertheless shown a drift, and the courts avow it in the direction of permitting an inquiry into the real facts, and allowing the return to stand or setting it aside in accordance with the facts as found by the court. *Park Bros. v. Oil City Boiler Works*, 204 Pa. 453, 54 Atl. 334; *Fulton v. Association*, 172 Pa. 117, 33 Atl. 324; *Hagerman v. Empire Slate Co.*, 97 Pa. 534.

This is the attitude of the courts of the United States. The fact of the presence of the defendant within the jurisdiction they determine for themselves, and in determining it they may or may not follow the rulings of the state courts."

(Italics ours.)

It is therefore respectfully submitted that in this proceeding defendant, Thomason, may not contradict the return of the marshal to the effect that an attested copy of the subpoena was left with an adult person, who was a member or resident in the family of Jasper Thomason, at the dwelling house or usual place of abode of said Jasper Thomason.

II.

THIS DEFENDANT'S CONTENTION THAT THE COPY OF THE SUBPOENA WAS NOT LEFT WITH AN ADULT PERSON CANNOT BE ACCEPTED.

Assuming, without conceding, that the return of the marshal is not conclusive upon this defendant, nevertheless it cannot be said that the copy of the subpoena was not left with an adult person.

From the Affidavit of Jasper Thomason it appears that at the time the copy of the subpoena was left with Rosamond Mildred Thomason (now Rosamond Mildred Hunt) i. e. on May 13, 1921, this Rosamond Mildred Hunt was over 17 years and 4 months old. She was not, it is true, of full age as defined by the laws of California. It does not follow, however, that she was not an "adult person" as that term is used in Federal Equity Rule 13.

No case in the Federal courts has been found defining this term as used in the rule. There are, however, decisions which indicate the purpose of the rule and illustrate the liberality with which it must be applied.

Phoenix Ins. Co. v. Wulf, 1 Fed. 775

This was a suit in equity in which a copy of the subpoena had been left with defendant's husband in a grocery store on the ground floor of the building upon the second floor of which defendant resided. The Court (Circuit Court, District of Indiana) declared that this was proper service of process under Rule 13. The Court in the course of its opinion says:

“A copy was left with one who understood its contents, and was likely to deliver it to the person for whom it was intended. * * * Rule 13 must receive a reasonable construction * * * The Rule is satisfied by a service outside the dwelling-house, at the door, just as much as inside the house.”

(Italics ours.)

In re Risteen, 122 Fed 732

This arose upon a plea in abatement wherein it was contended that the service of an involuntary petition in bankruptcy was insufficient. Section 18a of the Bankruptcy Act of 1898 provided that service of the petition with a writ of subpoena should be made in the same manner in which service of such process is now had upon the commencement of a suit in equity in United States courts. In other words, the Bankruptcy Act required process to be served in accordance with Federal Equity Rule 13. The petition in this matter was against the proprietor and manager of a hotel. The copy of the writ was left with the clerk of the hotel at a time when the man against whom the petition was filed was actually in another city. The Court (District Court, District of Massachusetts) held that Rule 13 had been complied with.

Two things are established by these cases: (1) that Rule 13 must be given a reasonable construction; and (2) that the purpose of Rule 13 is to insure that the copy of the subpoena be left with one who may understand its contents and is likely to deliver it to the person for whom it is intended. In the light of this

purpose it would certainly be an unreasonable construction of the Rule to give to the term "some adult person" the narrow meaning which this defendant attempts to give it. This term appears to have been incorporated in the Federal Equity Rules in this connection in 1866. Prior to that time the term "some free white person" was used in the same connection. It cannot therefore be properly contended that the word "adult" as used in these rules is to be given the meaning which the Civil Code of California gives to this word. Moreover, it is not fair to assume that "adult person" as used in this Rule means "person of lawful age" since if this is the proper construction the Marshal must at his peril be assured, not only that the person to whom he delivers the subpoena is of such maturity of age that it is reasonable to suppose that such person will understand the contents of the subpoena and be likely to deliver it to the defendant, but that the person in question has as a matter of fact (regardless of appearance) attained majority. The case at bar aptly illustrates the injustice which must necessarily result from any narrow construction of this term as used in the Rule.

III.

EVEN ASSUMING THAT FEDERAL EQUITY RULE 13 WAS NOT COMPLIED WITH, THIS DEFECT CANNOT BE URGED BY THIS DEFENDANT.

It is significant that none of the affidavits filed by defendant, Thomason, in support of this motion state

that he himself did not in fact receive the copy of the subpoena left with his daughter. Assuming, without conceding, that his daughter was not an "adult person" within the meaning of Rule 13, nevertheless defendant must as a basis for urging the granting of this motion show substantial injury. He cannot show this save by showing that he did not until shortly before the notice of this motion have actual knowledge of this suit against him. If he had such knowledge, surely he should not be now permitted to urge that the service of the subpoena be quashed and that the decree against him be set aside. Having with knowledge of the pendency of the suit gambled upon an outcome favorable to himself, he should not be now permitted to overthrow the decree against him. It affirmatively appears (as indicated above) that at the time of the service of the subpoena he was actually residing within the territorial jurisdiction of this Court. He does not show affirmatively (and in the face of the marshal's return the burden was certainly upon him to do this) that he did not actually receive the copy of the subpoena from his daughter. He does not show affirmatively that he did not at all times have actual knowledge of the pendency of the suit and the proceedings therein which he now attacks. His own affidavit declares that neither the marshal nor any of his deputies ever delivered the copy of the subpoena to him; that he was not present at the time the copy was delivered to his daughter; and that he has never himself appeared, either in person or by attorney. Here he stops. His daughter's affidavit declares that so far as she

knows no copy of the subpoena was delivered to him by the deputy marshal; that he was not present at the time of the delivery of the copy of the subpoena to her, and that "no other copy of subpoena" in the action was ever delivered to him.

Over against this the Court's attention is respectfully invited to the averments of the affidavit of Joseph L. Lewinson, filed in opposition to this motion: That the Court found that this defendant was guilty of the gravest frauds charged against him in the amended supplemental complaint; that one H. F. Davis, a son-in-law of this defendant, and Meryle Thomason Davis, a daughter of this defendant, participated in these frauds; that said Davis was a defendant in said cause and also an attorney for numerous other defendants; that Meryle Thomason Davis was herself a witness; that when asked on the witness stand if she knew where her father (this defendant) was she said that she had talked to him the week before, but that he was somewhere in Kern County at a location which no one knew; that despite plaintiff's efforts, not only through the United States Marshal, but also through a firm of private detectives, plaintiff was unable to serve a subpoena upon this defendant.

The burden is upon this defendant to show that this motion is prosecuted in good faith. He is attacking a record which, upon its face, is faultless. If he knew of the proceedings being taken against himself it was his duty to have taken prompt action. It is for him to show that he had no such knowledge and this he has failed to do. The fair inference from all the facts now before the Court is that he had such knowledge.

Here, it is respectfully submitted, is a clear case for the application of Federal Equity Rule 19:

“* * * The court, at every stage of the proceeding, must disregard any error or defect in the proceeding which does not affect the substantial rights of the parties.”

It is respectfully submitted that the motion for an order quashing service of the subpoena and vacating and setting aside the order Pro Confesso and the Final Decree against defendant, Jasper Thomason, should be denied.

Wm Story, Jr.

Joseph L. Lewinson

Solicitors for Plaintiff

McComb & Hall

Of Counsel

[Endorsed]: No Eq. D-61-J Dept..... In the DISTRICT COURT of the United States, Southern District of California,Division. FRANCES INVESTMENT COMPANY, a corporaton Plaintiff. vs. FRIEND J. AUSTIN, et al., Defendants. MEMORANDUM OF POINTS AND AUTHORITIES IN OPPOSITION TO MOTION TO QUASH SERVICE OF SUBPOENA, ETC. FILED APR 29, 1925 CHAS. N. WILLIAMS, Clerk By Edmund L. Smith Deputy Clerk Received copy of the within Memorandum this 29 day of April 1925 Newlin & Ashburn Wm C Kendrick Attorneys for Jasper Thomason WILLIAM STORY JR., and JOSEPH LEWINSON McCOMB & HALL Attorneys at Law 1014-15-16 Bank of Italy Bldg. Seventh and Olive Streets Los

Angeles, Calif. Phone 821459 215 West Seventh Street Attorneys for Plaintiff

IN THE DISTRICT COURT OF THE UNITED STATES IN AND FOR THE SOUTHERN DISTRICT OF CALIFORNIA SOUTHERN DIVISION

FRANCES INVESTMENT)	
COMPANY, a corporation,)	
)
Plaintiff,)	IN EQUITY
	) Eq. D-61-J
vs)	REPLY BRIEF ON
	) MOTION TO
	) QUASH
FRIEND J. AUSTIN, et al.,)	
)
Defendants.)	

ERRATA

Two errors occur in our opening memorandum. Section 655 of 1 Street's Federal Equity Practice was erroneously cited as 665, and 34 Corpus Juris, page 899, Section 1310, was erroneously cited as Section 310.

PRELIMINARY OBSERVATIONS.

Counsel for plaintiff have served with their brief herein a new and additional affidavit of Mr. Lewinson, to the consideration of which affidavit we object upon the ground that no leave to file or present the same was given, but that on the contrary the matter was submitted upon the papers on file on Monday last.

We have prepared and are submitting herewith an additional affidavit of Meryle Thomason Davis, which

affidavit we desire considered in the event that the court should deem it proper to take Mr. Lewinson's affidavit in consideration. From an examination of the Davis affidavit it will appear clearly that Mr. Lewinson has set forth the substance of only a part of the testimony of Mrs. Davis on the subject of her sister's age and such a part as leaves an erroneous impression in the mind of the court as to what she actually did say. It will also be observed from the proceedings at the trial as set forth in this new affidavit of Mrs. Davis that, on the 4th day of October, 1923, the date mentioned by Mr. Lewinson in his new affidavit, Mr. C. T. Walton had ceased to be United States Marshal and Mr. W. S. Walton had not only ceased to be a deputy marshal but was not within the jurisdiction. How counsel managed to procure the making and filing of such an amended return on that day by a man without the jurisdiction is for him to explain. We do not understand it. Not only does his own statement at the trial show that C. T. Walton and W. S. Walton had on that day ceased to be officers of the court, but this is a matter of which the court will take judicial notice and the briefest inquiry will disclose that in fact when the amended return was made the parties signing or purporting to sign the same had no official relation to the government, and, although they purported to act as officials, that was an unwarranted assumption of authority, and the return being at that time made by a private individual has no more efficacy than a return made by any other private citizen. The affidavit of W. S. Walton, verified October 5, 1923,

which is likewise attached to the subpoena, shows by fair inference that he had at that time ceased to be a deputy marshal.

If Mr. Lewinson's affidavit is considered we also ask the court to consider in opposition thereto the affidavits submitted by us in opposition to motion for continuance.

RETURN OF MARSHAL NOT CONCLUSIVE.

Even if it should be conceded that at the time the amended return was made (and, of course, the original return wholly fails to comply with equity rule XIII) Mr. W. S. Walton was still deputy United States Marshal, nevertheless that return is, under the large preponderance of authority, subject to impeachment upon a motion such as this.

Counsel have insisted so vigorously upon the impeccable nature of the amended return that we feel warranted in pointing out to the court the fact that the return is of itself of debatable sufficiency. The case of *Nickerson vs. Warren City Stc. Co.*, 223 Fed. at 845 (cited by plaintiff) says:

“Whenever the question of service is raised in determining the validity of a judgment obtained by default and without notice in fact to the defendant, and because of this without opportunity to present the defense, the record may properly be closely scrutinized to see that there was valid service.”

Equity Rule XIII provides for alternative methods of substituted service, i. e., the leaving of a copy at

the dwelling house or usual place of abode and with an adult who is a member of or resident in the family. The amended return at bar is equivocal in that it does not show whether the service was made at the dwelling house or at the usual place of abode (which expressions are not necessarily synonymous) nor does it show that Miss Thomason was a member of defendant's family or a resident in his family. The return adopts the disjunctive and thus leaves it open to question as to whether the rule had in fact been complied with. In other words, the marshal has made a "shot gun" return seeking by generalities to come within the purview of the rule without purporting to confine himself to the exact fact. Moreover, the amended return does not say that Miss Thomason is or was an adult person,—it merely states that service was made on "Miss Thomason an adult person." The phrase "an adult person" being a mere recital as distinguished from a sworn allegation.

Be that as it may, the return, assuming it to be in all respects complete and regular on its face, is nevertheless subject, on a motion of this kind made by the defendant against whom default judgment has been entered, to impeachment.

Foster's Federal Practice, Section 167a, says:

"If the marshal or his deputy make the service, his unverified return is sufficient. This may be contradicted, although there is a remedy by an action against the officer for a false return. The marshal's return, that the corporation served was transacting business within the district, can be

contradicted; so can his return that the person on whom the service was made was authorized to represent the defendant for that purpose."

The leading case in this jurisdiction (cited in our opening memorandum but singularly ignored in plaintiff's brief) is *Blythe vs Hinckley*, 84 Fed. 228, decided by Judge Morrow sitting in Circuit Court. The discussion of the point here involved begins on page 239. The return showed service on Florence Blythe Hinckley "by delivering to and leaving with Mrs. Harry Hinckley, an adult person, who is a resident in the place of abode of Florence Blythe Hinckley, said defendant named herein, at the County of Alameda in said district, an attested copy thereof, at usual place of abode of said Florence Blythe Hinckley, one of the defendants herein." Judge Morrow said:

"It will be observed that the return does not show that Mrs. Harry Hinckley, to whom a copy of the subpoena was delivered, was a member or resident of the family of Florence Blythe Hinckley; and it is contended that this departure from the requirement of the rule is fatal to the service, and therefore renders the decree absolutely void. It appears that Mrs. Harry Hinckley is the wife of the brother of the deceased husband of the defendant Florence. The difference between leaving a copy of a subpoena at the dwelling house or usual place of abode of the defendant with some adult person who is a member or resident of the family of the defendant, and leaving it

with a person who is a resident of the place of the abode of the defendant, is certainly very great, and might be very important. Take the case of a defendant living at one of our large hotels. A service such as is required by the rule would secure the delivery of the writ to some person so related to or associated with the person to be served that the substituted service would practically be the equivalent of an actual personal service by the officer; but a service such as was made in this case might be made by the delivery of the writ to an entire stranger, or to some indifferent or ignorant servant residing in the hotel, with no probability whatever that it would reach the party for whom it was intended. *White v. Primm*, 36 Ill. 418. Clearly, the rule is not complied with by any such service. *Harris v. Hardeman*, 14 How. 334. But it is said that the return of the marshal is that he has made personal service of the subpoena on Florence Blythe Hinckley, and that, as there is nothing in his certificate as to the method of making the service inconsistent with this return, a good and sufficient service will be presumed. It is also further contended that, if the return is defective in this respect, the defect has been cured by the recital in the decree that the subpoena "had been duly and regularly served within the Northern district of California upon the respondent in said cross bill of complaint." The doctrine here invoked to support the decree would be applicable if the

decree were now being subjected to a collateral attack. In such a proceeding every intendment would be indulged in support of the decree, and whatever appeared in the record as having been done would be presumed to have been rightfully done."

It will be observed from the foregoing discussion that the court in effect held delivery to a person, who, in point of fact would in all probability deliver the subpoena to the defendant, was not sufficient in the absence of a showing of a strict compliance with the equity rule. Mrs. Harry Hinckley, to whom the subpoena was delivered, was in fact the sister-in-law of the defendant and the return showed that she was an adult person and residing in the usual place of abode of the defendant. Every argument which plaintiff makes in the instant case relative to the actual probability of the defendant having received the subpoena would be equally applicable to the Hinckley case. But the point of the decision is that the Supreme Court has prescribed by its equity rule XIII the conditions which it deems necessary to warrant the assumption that a substituted service by leaving copy with a third person would actually reach the defendant, and those conditions are (1) that the copy be left with an adult person, (2) who is a member of or resident in defendant's family, and (3) at the usual place of abode or dwelling house of the defendant. This is a method of substituted service. All authorities agree that such method of service must be strictly pursued.

The Blythe decision likewise disposes of the contention that this motion is a collateral attack upon the proceedings or upon the return of the marshal. Judge Morrow said:

“The doctrine here invoked to support the decree would be applicable if the decree were now being subjected to a collateral attack.”

In *Estate of Davis*, 151 Cal. 318, 323, the Supreme Court of California enumerates the various methods of direct attack. Speaking of probate orders such as appointment of administrator, etc. the court said:

“Each can be attacked directly by appeal, or by some motion authorized by law for the purpose, or, perhaps, by bill in equity, but an attack made in a different proceeding in the same estate would clearly be collateral.

Peper Automobile Co. v. American Motor Car Etc. Co., 180 Fed. 245 (cited by us but ignored by counsel for plaintiff) is directly in point. That was a motion to quash service of summons in a law case, on the ground of want of jurisdiction over the person by reason of failure to serve the writ. Judge Pollock said, in part:

“However, the question here presented is not one which arises as to the jurisdiction of the court over the subject-matter of the litigation. Jurisdiction over the subject-matter is conceded. The question here presented touches only this one matter: Did the court by the service of the summons, as shown by the return of the marshal, acquire jurisdiction over the person of the de-

fendant? The determination of this question must rest on the actual facts, and not upon the accuracy of the decision of the marshal of the question as to whether the defendant was at the date of the service doing business in the state and district, and if so, whether the person on whom the writ was served was the representative of the defendant in the doing of such business, for as defendant, by the declaration of plaintiff made for the purpose of showing the jurisdiction of the court over the subject-matter of the litigation, is alleged to be a corporate citizen of the state of New York, it must of necessity have been engaged in doing business in this jurisdiction, else it was not amenable to the process of this court without its consent. Mechanical Appliance Co. v. Castleman, 215 U. S. 437, 30 Sup. Ct. 125, 54 L. ed. —; Peterson v. Chicago, Rock Island & Pac. Ry., 205 U. S. 364, 27 Sup. Ct. 513, 51 L. ed. 841; Green v. Chicago, Burlington & Quincy Ry., 205 U. S. 530, 27 Sup. Ct. 595, 51 L. Ed. 916; Conley v. Mathieson Alkali Works, 190 U. S. 406, 23 Sup. Ct. 728, 47 L. Ed. 1113; Wabash Western Railway v. Brow, 164 U. S. 271, 17 Sup. Ct. 126, 41 L. Ed. 431.”

With respect to the contention that the plaintiff had a right to jury trial on the question of the sufficiency of the alleged service (a contention similar to Mr. Lewinson's demand for a hearing of this motion upon oral testimony), the court said:

“The only contention therefore raised for decision being one going to the correctness of the conclusion drawn by the marshal from appearance as set forth in his return that defendant was at the time of the service doing business in this state of such character and in such manner as to subject it to the jurisdiction of the court at the suit of plaintiff, and that Cody was its agent and representative in the transaction of such business, and the question thus decided and the result determined by the return of the marshal being one for the determination of this court as to its jurisdiction when questioned by the defendant in limine, prior to any general appearance in response to the command of the writ, there is, to my mind, no valid reason appearing why the court, without the intervention of a jury, may not and should not proceed to an investigation and decision of such question touching its jurisdiction so acquired over the person of defendant. The question presented is not such an issue of fact as entitles the plaintiff to a jury trial thereof as a matter of right under the Constitution and the statute. This has been the manner in which the precise question here presented has been determined by the courts under the accustomed practice, as evidenced by many adjudicated cases.”

And the court denied a jury trial, held in effect that the matter was properly determinable upon affidavits, and basing the decision upon those affidavits quashed the service.

Bradley vs. Burrhus, 135 Ia. 324, is in point. The statute provided for service by leaving copy at residence, etc. In that case the copy of the summons was left with the defendant's wife. The court held that the statute, being one for substituted service, should be strictly construed and that the return could properly be shown to be false, for "as the court would not enter a judgment on a false return, if advised in advance, it should be free to set aside, as between the parties, at least when subsequently the falsehood is made to appear."

The authorities cited by plaintiff in this connection by no means uphold counsel's contention. Joseph vs. New Albany Etc. Co., 53 Fed. 180, proceeds upon a basis which renders it clearly distinguishable from this one, for the court there said:

"It is not necessary to determine what the rule of law touching the question under consideration may be in other jurisdictions. This court has, by rule, adopted the statute of this state in regard to the service of process in actions at law; and therefore the statute of this state, as interpreted by its highest judicial tribunal, must rule the question in actions at law in this court."

Counsel for plaintiff impugn our good faith in this matter and, *waiving* the banner of fraud which has carried them through the case so far, assert that our motion is not made in good faith. They themselves have neglected to point out to the court the fact that the Joseph case was concerned with an interpretation of a state law and not a general rule of equity.

They have also neglected to call the court's attention to the later case decided by the Circuit Court of Appeals for the same Circuit,—Frank Parmalee Co. vs. Aetna Life Ins. Co., 16 Fed. 741, where the sheriff's return showed that service had been made by delivery of copy to one Gany as secretary of the defendant, when in truth he was not at the time of such service secretary or any other officer of the company upon whom summons could be served. With respect to such cases as the Joseph case, Judge Grosscup said:

“But is this a case in which the return, in the Whelock case, cannot be challenged? Many cases are cited by defendant in error, illustrating the circumstances under which an officer's return upon a summons may not be contradicted. Bank of Eau Claire v. Reed, 232 Ill. 238, 240, 83 N. E. 820, 122 Am. St. Rep. 66; Brown v. Kennedy, 82 U. S. 600, 21 L. Ed. 193; Trimble v. Erie Electric Motor Co. (C. C.) 89 Fed. 51; Joseph v. New Albany etc., Co. (C. C.) 53 Fed. 180; United States v. Gayle (D. C.) 45 Fed. 107; Walker v. Cronkite (C. C.) 40 Fed. 133; Hunter v. Stoneburner, 92 Ill. 75, on page 79; Fitzgerald v. Kimball, 86 Ill. 396, 397; Reddish v. Shaw, 111 Ill. App. 337, 338; Irvin v. Smith, 66 Wis. 113, 27 N. W. 35, 28 N. W. 351; 18 Enc. Pleading & Practice, p. 967. But none of these cases bear any analogy to the case under review. Surely had appropriate action been taken in the action in which the summons was issued, the verity of the return might have been challenged and tried.”

Von Roy vs. Blackman, Fed. Cas. No. 16,997, does use the language quoted at page 4 of plaintiff's brief, which language is characterized in note 2 to section 167a of Foster's Federal Practice (page 970) as dictum, which it truly is; for the court there held the return of service to be defective on its face because of the fact that it showed that the copy had been left with a person residing at defendant's domicile but did not show him to be a member of the family. The return also showed that the service was made upon a person over the age of fourteen years. Speaking of this decision, the author of 1 Street's Federal Equity Practice, at section 595, page 371, says:

"The fact was not observed upon that the return also failed to show that the copy was left with an adult, though this was doubtless a fatal defect. In our law, a person is not an adult in either legal or common acceptance until he is of full legal age. In the civil law a male is adult at fourteen."

Trimble vs Erie Electric Motor Co., 89 Fed. 51, apparently proceeds, as did the Joseph case, upon a construction of state law. While it is not clear, the inference from Circuit Court rule 86, which is quoted on page 51, and the whole tenor of the decision, is that it was a question of state law, pure and simple, which was under consideration.

While the court in the Nickerson case, 223 Fed. 843, does use the language quoted by counsel for plaintiff, nevertheless it follows the suggestion made in this statement:

“The rulings have nevertheless shown a drift, and the courts avow it in the direction of permitting an inquiry into the real facts, and allowing the return to stand or setting it aside in accordance with the facts as found by the court.”

And the court then proceeded itself to inquire into the verity of the facts shown by the marshal's return, held that the return was substantially true in point of fact and that the return in form was insufficient and gave leave to amend the same. Counsel for plaintiff have neglected to call this court's attention to the fact that the truth of the marshal's return in the Nicker-son case was actually canvassed by the court.

It seems fairly apparent, therefore, that the great weight of authority is that the court must, as a matter of strict legal right, examine into the truth of the marshal's return when challenged by a defaulted defendant and that in point of equity the court should do this very thing. Otherwise parties may, as in the instant case, be adjudged guilty of the “gravest frauds” without ever having had a hearing before the court and without in fact knowing of the dependency of the proceeding. The facility with which counsel for plaintiff have procured an amendment of the return in this case by a man who was no longer a public official but purported to act as such, and made a record which, on its face, was official when in truth and fact it was but the certificate or affidavit of a private individual, —illustrate the propriety of the rule that the return and the facts upon which it is predicated must, when the same are attacked, be closely scrutinized and the

truth or falsity of the same determined upon the motion or similar attack.

THE COPY OF SUBPOENA WAS NOT
DELIVERED TO AN ADULT PERSON.

Under point II of plaintiff's brief counsel plead for a liberal interpretation of Rule XIII, such as will uphold the service in this case upon the showing made by the affidavits presented. They cite certain cases which involve the question of whether service is made at the residence or with a member of the family but they cite no case whatever in which it is held that a person who is under the age of majority is an adult in any sense of the word. They ignore the language of Street (cited in our opening memorandum and above quoted) in which he says that the service in the Van Roy case showing merely the leaving of a copy with a person over the age of fourteen years "was doubtless a fatal defect." For, he says: "In our law, a person is not an adult in either legal or common acceptance until he is of full legal age."

The affidavits of Mr. and Mrs. Thomason and of Rosamond Thomason Hunt herself, supported as they are by the birth record attached to Mr. Thomason's affidavit, cannot be gainsaid. Regardless of what may have been the testimony of Meryle Davis at the trial, that testimony itself cannot be considered here because it is hearsay on this motion. Moreover, she corrected that testimony at the trial and has, in the affidavit filed in opposition to plaintiff's motion for continuance, shown that in point of fact Rosamond

Thomason Hunt was at the time of service less than eighteen years of age.

Counsel would have the court hold that Rosamond was an adult because she was almost one,—just as in the Hinckley case the cross-complainant sought to uphold the service because in point of fact the subpoena would probably have been delivered by the sister-in-law to the defendant. Counsel overlook the fact that the portion of the rule under which they proceeded provides a method of substituted service which is the substantial equivalent of Section 412 of the California Code of Civil Procedure, and that the authorities universally declare that such modes of substituted service must be strictly pursued. The legislative authority (or in equity cases the Supreme Court) determines for itself what are the rules to be prescribed as consistent with due process of law, by which a person can be brought within the jurisdiction of the court without being personally served with its writ, and the Supreme Court in this instance has said that the service must be upon an adult person. Not having prescribed in the rule or in any decision any special definition for the word “adult” we must go either to the common acceptance of the term or to the definition of the term as contained in the state statutes,—there being no federal pronouncement on the subject. Which ever way we turn we find the same result that a woman is not an adult until she is at least eighteen years of age. But counsel say that the court should interpret this matter liberally and, because of the proximity of the eighteenth birthday, hold that Rosamond was an

adult. If the court is authorized to depart from the clear requirement of the rule in this case, then what are the limits? Is each court in each instance to determine for itself what constitutes an adult and to do this without any rule whatever? If a person seventeen years and four months of age is to be held an adult is one of seventeen or of sixteen or of fourteen? Is the question to be determined by the apparent physical perfection or development of the person or by his or her mental maturity? Is there to be no guide, and is each court in each instance to be a law unto itself in the determination of its question? These questions answer themselves in the negative because they show the absurdity of the rule for which plaintiff's counsel contend.

We respectively submit that it is not for this court to say whether or not service upon a person slightly over seventeen years of age would probably have procured the delivery of the document to the defendant, when the Supreme Court has said that the person to whom delivery must be made in a case such as this must be an adult person,—in other words, when the Supreme Court has said in effect that, if not delivered to an adult person the writ is not to be presumed to have reached its ultimate destination.

Knowledge of the pendency of the suit or actual receipt of subpoena from a minor person is of no legal consequence.

Counsel make much of the fact that Jasper Thomason has not presented an affidavit in which he says that he did not receive from his daughter Rosamond

the copy of subpoena, or that he never received it from any other person and that, therefore, he is presumed to have come into actual possession of the same. We invite the court's attention to the fact that this question of actual receipt of the subpoena or actual knowledge of the pendency of the suit was injected into this matter by the affidavit of Mr. Lewinson, served on Saturday last; that while Jasper Thomason was able to make an affidavit at the time we first instituted this proceeding he is now in such physical and mental condition that an affidavit from him cannot be presented; that in the affidavit of Rosamond Mildred Hunt, verified April 26, 1925, and submitted in opposition to motion for continuance, she sets forth with more particularity the things which occurred at the time the marshal served or attempted to serve her, and particularly the fact that the subpoena "was never delivered to Jasper Thomason by her, and she verily believes that said subpoena was never delivered to said Jasper Thomason at any time" and "that the said subpoena left as aforesaid disappeared before the return of her said father Jasper Thomason, and she verily believes that the said subpoena never came into the possession of her said father at any time." But as we have said, the question of actual knowledge or of actual receipt of the process is legally inconsequential. Rule XV provides that, process shall be served by a marshal or his deputy "or by some other person specially appointed by the court or judge for that purpose, and not otherwise." There is no contention that Rosamond was ever specially appointed by the

court for the purpose of delivering this copy to her father, and to hold that such delivery by her, if made, was sufficient service would be directly in the teeth of Rule XV.

32 Cyc., page 462, says:

“If all that the statute requires is done, it is immaterial that defendant in fact receives no actual notice thereof; and conversely, if the statute is not complied with it is of no avail that defendant does in effect receive actual notice of the action.”

The point is well established as witness the following authorities:

National Metal Co. vs. Greene Con. Etc Co. 11 Ariz. at page 110:

The National Metal Company, appellant, brought suit against the Greene Consolidated Copper Company and another. A demurrer to the complaint was sustained, and, plaintiff declining to amend, judgment thereon was rendered for the defendants. From this judgment plaintiff appealed.

“The complaint, in the briefest substance, alleges that plaintiff is a foreign corporation not at any time engaged in the transaction of business in this territory except in isolated transactions in the nature of interstate commerce; that in March, 1903, the defendants sued the plaintiff in the district court of Santa Cruz County; that in that suit the sheriff made return of summons certifying that he had served the same upon one

Pellegrin, the agent of the plaintiff (defendant in that suit); that plaintiff did not appear in that action or answer therein; that on June 23, 1903, being the last day of the term of that court, the court rendered personal judgment by default against the plaintiff; that the said Pellegrin was not at the time of such alleged service, and never had been, the agent of the plaintiff in any manner or for any purpose whatsoever; that on April 4, 1903, an officer of the plaintiff received a letter, at the New York office of plaintiff, from A. L. Pellegrin & Co., stating that service of summons had been made upon them in the action referred to, and that they had notified both of the plaintiffs in that action and their attorneys that they were not, and never had been, the agents of plaintiff; that plaintiff did not receive either from Pellegrin & Co., or from any other source a copy of the summons; that at the time of said service the said Pellegrin gave notice to the sheriff serving him and to the plaintiffs in that action that he was not, and never had been the agent of the plaintiff for any purpose whatsoever; that after receiving notice of the rendition of the said judgment, plaintiff in November, 1903, filed in said action its motion to quash said pretended service of process and to vacate, annul and set aside said default judgment, which motion was denied. * * *

“Appellees urge that the complaint is defective in four respects. Only two of these require consideration. They are: ‘(1) That the appellant

having had actual knowledge of the pendency of the action, and the attempted service of process, in ample time to avail itself of its legal remedy, or to interpose a defense, it has no standing in an equitable action to vacate the service of process and judgment. (2) That the complaint is wholly insufficient in that it fails to allege that the false return of service was procured by the fraud of plaintiffs.”

1. It seems manifest from the statements and argument of counsel that the trial court sustained the general demurrer to this complaint upon the authority of the decision of the Circuit Court of Appeals for the Seventh Circuit of Massachusetts. *Benefit Life Assn. v. Lohmiller*, 74 Fed. 23, 20 C. C. A. 274. The most pertinent expression in this case is: “If it be conceded that the complainant was not properly served, and that the judgment was voidable, or even void, that conditions is not of itself sufficient to warrant interference; but an equity must be presented aside from that bare circumstance, showing that the injured party was without knowledge, was taken by surprise, and had no opportunity, in fact, to obtain a hearing. So far as it appears from the allegation of this bill, the complainant may have possessed full and timely information of all the proceedings, but refrain from making any motion, relying upon the assumed defect, and if such were the fact the remedies are legal only. Neglect of the opportunity which was then open for a hearing would bar equitable relief.” But

this expression must not be taken as a statement of a general rule, applicable in all situations. It must be understood in the light of the facts. In that case the association was engaged in business in the state and actual service had been made upon resident agents of the association, professedly under a general statute authorizing such service. The fact of agency was not disputed, but that a different agent should have been served was contended. It was not averred that the agents served, either collusively with the plaintiff in the action in which process was served, or at all, had failed to acquaint the proper officers with the service; but it was urged that service should have been made under a special statute, upon a special agent for service of process, and not under a general statute authorizing service upon any agent. Applied to those facts, the statements quoted have a very different bearing from that had if they are applied to the facts in this case; we cannot accept them as applicable to these facts. Here the plaintiff was advised by a stranger that the stranger had been served with process in a case against plaintiff. The credit it may have given to this information is immaterial. If it relied upon the information, and believed that a suit had been instituted against it, it nevertheless could appropriately ignore the matter, and assume that the court would not proceed to judgment until service should be made. A distinction is to be observed between knowledge of the pendency of a suit and

notice thereof. Jurisdiction can be acquired, if one does not submit himself to it, in no other way than by actual notice or by constructive notice. Actual notice is given only by personal service of process; constructive notice, by some form of substituted service. Some decisions which superficially may appear to oppose our conclusion may be reconciled with it by observing that it is often held, and properly so, that actual notice may sometimes be given, although there is a formal defect in the manner of service; in considering the matter the word "knowledge" is occasionally used inaccurately for "notice," and vice versa. In such case there has been service despite the informality. The time to attack such service by reason of such informality is prior to judgment. A failure so to attack the service may amount to a waiver of the informality; and one who has ignored such service, and thereby has lost an opportunity to be heard in the case, may have no just cause for complaint after judgment. But where there is no service there is no notice, irrespective of any knowledge which the defendant may acquire informally. Notice is given only by service of process. Informal knowledge will not supply it, and cannot be relied upon to put the one acquiring the knowledge upon notice or to force him into court to defend himself. The supreme court of the United States recognized this in *Connecticut Mut. L. Ins. Co. v. Spratley*, 172 U. S. 612, 19 Sup. Ct. 308, 43 L. Ed. 569. After reference to

certain notices provided to the company, it is said: "We do not intimate that mere knowledge or notice as thus provided would be sufficient without a service on the agent in the state where the suit was commenced." Again: "Process sent (to a nonresident) out of the state, and process published within it, are equally unavailing in proceedings to establish his personal liability." *Penoyer v. Neff*, 95 U. S. 727, 24 L. Ed. 565. Still further: "No court can exercise, at common law, jurisdiction over a party unless he is served with the process within the territorial jurisdiction of the court or voluntarily appears." *Mexican Cent. R. Co. v. Pinkney*, 149 U. S. 209, 13 Sup. Ct. 865, 37 L. Ed. 699. "It is not sufficient," says Alderson on *Judicial Writs and Process*, pages 227, 228, section 111, "that a defendant have actual notice (knowledge) of a proceeding against him; he must be summoned in a lawful manner." The point we are making is clearly pointed out again by the supreme court of the United States in *Fitzgerald Etc. Co. v. Fitzgerald*, 137 U. S. 98, 11 Sup. Ct. 39, 34 L. Ed. 608, as follows: "So that, whether the president of this company was inveigled into Lancaster county or not the service upon him amounted to no more than an informal notice only, and did not bring the company into court, and this the company was bound to know, and must be held to have known. Without regard to the evidence relied on to show that there was concealment of the circumstances in relation

to the service, knowledge of these circumstances was wholly immaterial, in view of the fact that the service was unavailing to bring the defendant into court, unless it chose to come there." * * *

The distinction between actual service, though defective, and entire absence of service is interestingly illustrated in the decisions in the case of *Capwell v. Sipe* (C. C.), 51 Fed. 667, affirmed 59 Fed. 970, 8 C. C. A. 419. See, also, *Hollingsworth v. Barbour*, 4 Pet., at p. 476, 7 L. Ed. 922. If the allegations of the complaint in this case are true, there was no service whatsoever, and the judgment, though not void on its face, is void in fact; and plaintiffs' only adequate protection lies in this action. That it did not act upon the information acquired from Pellegrin was not neglect, was not "sleeping on its rights"; it was inaction in reliance upon its legal rights, in reliance upon the constitutional guaranty of due process of law. Such is not the inaction which bars relief in equity. To accomplish such a bar, it is said that the inaction must be such as amounts to "a violation of positive legal duty." *Pomeroy's Equity Jurisprudence*, 2d ed., sec. 856, p. 1187."

Wilmer v. Pica, 118 Md. at 550: Speaking of a case of service upon defendant's daughter, the court said:

"It does not matter that she may have been informed by her daughter of the nature of the proceeding."

Caldwell vs. Glenn, 6 Rob. (La.) 9: The citation in this case had been ineffectually served and the court said:

“Knowledge of the suit on the part of the defendant, no matter how clearly brought home to him, will not supply the want of citation.”

Osborne & Co. vs. Columbia Etc. Corporation, 38 Pac. 160, 161 (Wash.):

“Two other reasons are suggested why the order of the lower court should be reversed; one is that the defendant had knowledge of the pendency of the suit and that such knowledge should be given the same force as proper service. But we are aware of no rule which compels a defendant to appear in a case until service has been made, requiring such appearance.”

Harrell vs Mexican Cattle Co., 73 Texas, at 615: In this case the writ was served on one Swinney as secretary of defendant corporation. He was not elected to the office until three days after service and it was held that the service was void. The court said:

“The third and fourth proposition submit that the evidence showed that the officers of the appellee corporation had actual notice of the issue of the writ of garnishment or at least knowledge of such facts as should affect them with constructive notice. We are of the opinion that these propositions are based upon a misapprehension of the law of the case. In ordinary actions courts acquire jurisdiction over the persons of defendants so as to render binding judgments against

them by the service of process in the manner provided by law. Service may be waived by express stipulation in writing or by the voluntary appearance of the party either in person or by attorney. But we know of no authority for holding in any case that actual knowledge of the existence of a suit or the issue of a writ will supply the want of service. A defendant may know that a suit has been brought against him, yet he is not bound to take action until he has been duly served with process. He may justly conclude that the court will see that he has been duly cited before acting, and hence is not presumed to know of a judgment that has been rendered against him without jurisdiction.

Bradley Mfg. Co. vs. Burrhus, 135 Ia. 324. This case arose under a statute providing for service by leaving copy at residence, etc. The copy was left with the defendant's wife, and with respect to the impeachment of the officer's return the court said:

"it need only be said that, as the statute prescribes the method of bringing a party into the court, it can be done in no other way; and the cases are uniform to the effect that his knowledge otherwise acquired, of the pendency of the proceedings, is matter of no moment. He is not chargeable until he becomes a party, and he can be made a party only by proper service of notice or by voluntary appearance."

Savings Bank vs Authier, 52 Minn. 98: The defendant was E. J. Daly. The writ was served on John

E. Dailey, who mailed it to the defendant, with a letter of explanation and the same was received by the defendant several days before judgment entered. The court said:

“The facts as to service being as above stated, it is perfectly useless to try to sustain the judgment, or to oppose the order setting it aside. The transmission of the summons by mail was wholly unauthorized by law as a mode of service, and of no more effect, although the defendant received it, than would have been his finding it in the street if it had been lost. The statute not only prescribes that service shall be made by delivering a copy thereof to the defendant personally (special provision being, however, made for a different mode of service at the house of his usual abode) but it in terms declares that the provision with reference to the service by mail of notices and other papers in actions shall not apply to the service of a summons.

The judgment being void for want of jurisdiction, the respondent was entitled to have it set aside, even though he made no showing of a meritorious defense.”

Wilcke vs Duross, 144 Mich. 243: *Sylabus*:

“Where, in a suit in Justice’s Court, process was *my* mistake served upon defendant’s daughter of the same name, instead of upon defendant, and defendant did not appear, the judgment founded thereon is void, and is properly set aside in chancery, though defendant knew of the mistake

in service on the day it was made and was kept advised by counsel of the progress of the case."

O'Connell vs Gallagher, 104 N. Y. App. Div. 492:

In this case the process server thought that he was serving the defendant Gallagher but he served another person who let it drop to the floor and a servant of the defendant found it and delivered it to the defendant. The court said:

"The fact that the summons and complaint is found upon the floor of the house, or in the street by a defendant in an action, or is delivered to a defendant in the action by one so finding it, is not the service that the Code of Civil Procedure requires, and defendant is under no obligation to appear and answer because a copy of the summons in an action in which he is named as a defendant comes incidentally into her possession when there is no delivery of the summons as a service upon her. Under such circumstances the defendant was justified in waiting until the judgment was sought to be enforced. The question of laches, therefore, cannot be considered, as the defendant had the legal right to have this judgment set aside at any time upon it appearing that it had been entered without actual service of the summons * * *"

Kochman vs O'Neill, 202 Ill. 110: In this case service of summons was made by reading it to the defendant's daughter, the statute apparently permitting of service upon the defendant by reading to him. The daughter told her mother about the incident the

same evening of the attempted service but the court held the service void.

The burden of plaintiff's insistence upon the court's setting this matter down for oral evidence is that by cross-examination plaintiff could develop that in fact defendant Thomason actually knew of the suit and actually received the copy of subpoena. We submit that the authorities abundantly show that the issue is a false one and that if counsel for plaintiff could establish all the facts that he claims it would avail him nothing. Plaintiff stands upon a record which shows service on Miss Thomason and not on defendant Jasper Thomason. The only question involved is whether Miss Thomason was an adult at that time. It is asking the court to lend an undue amount of credulity to the assertions of counsel when they insist upon reopening this matter and placing it on the calendar for further trial when the court has before it the official record of the Bureau of Vital Statistics, the affidavit of the party served and that of her mother and father as to the date of her birth. Counsel's surmise that these records and affidavits are all false and that perchance he could prove them to be so, is rather far fetched.

The suggestions of counsel that there has been latches in this case and that this motion cannot be granted without the showing of "injury" are answered by the above cited authorities, particularly the cases of—National Metal Co. vs Greene, 11 Ariz. 108, and O'Connell vs Gallagher, 104 N. Y. App. Div. 492.

Of course, there is no question as to the power of Judge James to set aside a void judgment rendered by Judge Bledsoe.

Hall v. M'Kinnon, 193 Fed. 574;
Birch v. Steele, 165 Fed. 584;
Ide v. Crosby, 104 Fed. 582;
2 Foster's Fed. Prac. 88 256.

Respectfully submitted,
A. W. Ashburn
Wm T. Kendrick

Solicitors for Defendant Jasper Thomason appearing specially herein.

[Endorsed]: In Equity No. Eq. D-61-J IN THE United States District Court, IN AND FOR THE SOUTHERN DISTRICT OF CALIFORNIA, SOUTHERN DIVISION FRANCES INVESTMENT COMPANY, a corporation Plaintiff vs. FRIEND J AUSTIN et al Defendants REPLY BRIEF ON MOTION TO QUASH Received copy of the within this 30th day of April 1925 Lewinson & Barnhill Attorneys for Plaintiffs Filed Aug 5 - 1925 Chas N. Williams Clerk R S Zimmerman Deputy NEWLIN & ASHBURN 935 Title Insurance Building Telephone Main 0159 LOS ANGELES, CAL. Solicitors for defendant Jasper Thomason appearing specially

At a stated term, to wit: the July, A. D., 1920 Term of the District Court of the United States of America, within and for the Southern Division of the Southern District of California, held at the Court room thereof, in the City of Los Angeles, on Monday, the fifteenth

day of November in the year of our Lord one thousand nine hundred and twenty;

Present:

The Honorable Benjamin F. Bledsoe, District Judge.

Frances Investment Co.,)	
)	
Plaintiff,)	
)	
vs.	)	No. D-61 Equity.
)	
Friend J. Austin &)	
Robert B. Walker, et al.,)	
)	
Defendants.)	

This cause coming on at this time for hearing on motion to dismiss; Jos. L. Lewinsohn, Esq., and William Story, Jr., Esq., appearing as counsel for plaintiff; and James E. Kelby, Esq. and Joe Crail, Esq., appearing as counsel for defendant; James E. Kelby, Esq., and Joe Crail, Esq., counsel for defendants, having presented arguments in support of said motion to dismiss; Jos. L. Lewinsohn, Esq., counsel for plaintiff having argued in opposition to said motion, and James E. Kelby, Esq., counsel for defendants, having argued in reply thereto; and Jos. L. Lewinsohn, Esq., counsel for plaintiff, having moved the Court for leave to amend amended supplemental bill by interlineation is hereby granted; Joe Crail, Esq., counsel for defendants moved to be allowed to amend Answer of Gill, and the Court ordered that ruling on said motion be held in abeyance for defendant to make further application if the present motion to dismiss is denied; and James E. Kelby, counsel for defendants, having been granted

by the Court one day within which to serve and file authorities on plaintiff, and plaintiff granted a like time within which to reply thereto, said cause is thereupon ordered submitted to the Court for its consideration and decision.

UNITED STATES OF AMERICA

District Court of the United States
SOUTHERN DISTRICT OF CALIFORNIA
SOUTHERN DIVISION

In Equity

The President of the United States of America,
Greeting!

To Jasper Thomason and Meryle T. Davis.

You Are Hereby Commanded, That you be and appear in said District Court of the United States aforesaid, at the Court Room in Los Angeles on or before the twentieth day, excluding the day of service, after service of this subpoena upon you, to answer a Amended Supplemental Bill of Complaint exhibited against you in said Court by Frances Investment Company, a corporation organized and existing under and by virtue of the Laws of Utah and to do and receive what the said court shall have considered in that behalf. And this you are not to omit, under penalty of FIVE THOUSAND DOLLARS.

Witness, The Honorable Benjamin F. Bledsoe, Judge of the District Court of the United States, this 9th day of May in the year of our Lord one thousand nine

hundred and twenty-one and of our Independence the one hundred and forty-fifth.

Chas. N. Williams, Clerk.

By R S Zimmerman Deputy Clerk.

MEMORANDUM PURSUANT TO RULE 12 OF
RULES OF PRACTICE FOR THE COURTS
OF EQUITY OF THE UNITED STATES
PROMULGATED BY THE SUPREME
COURT, NOVEMBER 4, 1912.

On or before the twentieth day after service of the subpoena, excluding the day thereof, the defendant is required to file his answer or other defense in the Clerk's Office;

otherwise the Bill may be taken pro confesso.

Chas. N. Williams Clerk.

By R S Zimmerman Deputy Clerk.

Amended Return	)	United States Marshal's
Francis Invest. Co.	)	Office
vs.	D-61	) Southern District of Cal-
Friend J. Austin, et al.	)	fornia.

I Hereby Certify and Return that I received the within writ on the 9th day of May, 1921, and personally served the same on the 13th day of May, 1921, on Jasper Thomason by delivering to and leaving with Jane Doe, whose true name is to the undersigned unknown and who is and on said 13th day of May, 1921, was an adult person and a member of the family and resident in the family of Jasper Thomason. Said defendant named therein, at the County of Los Angeles, in said District, an attested copy thereof, at the dwell-

ing house and usual place of abode of said Jasper Thomason, one of said defendants herein.

C. T. Walton

Form No. 570.

Amended Return	)	United States Marshal's
Francis Invest. Co.	)	Office,
vs.	D 61)	Southern District of Cali-
Friend J. Austin, et al.	)	fornia.

I Hereby Certify and Return, that I received the within writ on the 9th day of May, 1921, and personally served the same on the 13th day of May, 1921, on Jasper Thomason by delivering to and leaving with Miss Thomason an adult person, who is a member or resident in the family of Jasper Thomason Said defendant named therein, at the.....County of Los Angeles in said District, an attested copy thereof, at the dwelling house or usual place of abode of said Jasper Thomason one of said defendants herein.

C. T. Walton

~~A. C. Sittel~~ U. S. Marshal.

By W S Walton, Deputy.

Los Angeles, Calif.

October 4, 1923.

No. D 61 Frances Inv. Co. vs. Friend J. Austin, et al. Filed 10/4/23 CHAS. N. WILLIAMS, Clerk. By Edmund L Smith Deputy Clerk.

Clerk U. S. District Court Southern District of California.

By R. S. Zimmerman, Deputy

Filed Oct. 12, 1923

CHAS. N. WILLIAMS, Clerk

By Edmund L Smith, Deputy Clerk

hundred and twenty-one and of our Independence the one hundred and forty-fifth.

Chas. N. Williams, Clerk

resident in the family of Jasper Thomason. Said defendant named therein, at the County of Los Angeles, in said District, an attested copy thereof, at the dwell-

ing house and usual place of abode of said Jasper Thomason, one of said defendants herein.

C. T. Walton

~~A. C. Sittel~~ U. S. Marshal

By W S Walton, Deputy

Los Angeles, Calif.

October 4, 1923

Order fld 7/15/25 nunc pro tunc as of 10/4/23

No D61 Frances Inv. Co. vs. Friend J. Austin et al
Filed 10/4/23 CHAS. N. WILLIAMS Clerk By Edmund L Smith Deputy Clerk

State of California,)
)ss
County of Los Angeles.)

W. S. Walton, being first duly sworn, deposes and says: I received the within writ on the 9th day of May, 1921, and personally served the same on the 13th day of May, 1921, on Jasper Thomason by delivering to and leaving with Miss Thomason, an adult person who was then a member or resident in the family of Jasper Thomason, said defendant named therein, at the county of Los Angeles, State of California, an attested copy thereof, at the dwelling house or usual place of abode of said Jasper Thomason, one of said defendants herein. At said times above mentioned I was a duly qualified and acting Deputy United States Marshal for the Southern District of California.

W. S. Walton,

Subscribed and sworn to before me
this 5th day of October, 1923.

(Seal)

Chas. N. Williams

Clerk U. S. District Court Southern District of California.

By R. S. Zimmerman, Deputy

Filed Oct. 12, 1923

CHAS. N. WILLIAMS, Clerk

By Edmund L Smith, Deputy Clerk

UNITED STATES MARSHAL'S OFFICE }
 SOUTHERN DISTRICT OF CALIFORNIA } ss:

I Hereby Certify, That I received the within writ on the 9th day of May, 1921, and personally served the same on the 13 day of May, 1921, on Jasper Thomason by delivering to and leaving with Miss Thomason for Jasper Thomason said defendant named therein, personally, at the County of Los Angeles in said district, a copy thereof

Los Angeles,
 May 13th, 1921

C. T. WALTON,
 U. S. Marshal.
 By W. S. Walton,
 Deputy.

To the Marshal of the United States for the Southern District of California:

Pursuant to Rule 12, the within subpoena is returnable into the Clerk's Office twenty days from the issuing thereof.

Subpoena Issued May 9th, 1921

Chas. N. Williams

Clerk.

By R S Zimmerman

Deputy Clerk.

[Endorsed]: Marshal's Civil Docket No. 4392
 No. D-61 Equity United States District Court
 SOUTHERN DISTRICT OF CALIFORNIA IN
 EQUITY FRANCES INVESTMENT COMPANY,
 a corporation vs. FRIEND J. AUSTIN, Lettie M.
 Austin, et al. Alias SUBPOENA FILED JUN 10
 1921 CHAS. N. WILLIAMS, Clerk By P W Kerr
 Deputy Clerk

At a stated term, to wit: the July A. D., 1923 term of the District Court of the United States of America, within and for the Southern Division of the Southern District of California, held at the court room thereof, in the city of Los Angeles, on Friday, the fifth day of October, in the year of our Lord one thousand nine hundred and twenty-three.

Present:

The Honorable Benjamin F. Bledsoe, District Judge.

Frances Investment Co.,)

Plaintiff,)

vs.)

Friend J. Austin, Lessie E.)

Austin, his wife, William)

Martin Belford; Anna Marie)

Belford, his wife, The Peoples)

Abstract & Title Co., a corp.,)

H. F. Davis and Myrle T.)

Davis his wife, John W. Aus-)

tin & Laura A. Austin, his)

wife; Jasper Thomason;) No. D-61 Equity S. D.

Thomas Edwin Gill & Myra)

Pitzinger Gill, his wife,)

Harry D. Aron, Carrie A.)

Banta, individually and as)

Executrix of the Estate of)

T. P. *Canta*, deceased; Rob-)

ert B. Walker; Imperial)

Water Co. No. 1; Imperial)

Water Co. No. 2; Imperial)

Water Co. No. 3; Wade N.)

Boyer and Leah Boyer, his)

wife, Paul H. Marley; F. M.)

Rubbles; and J. Wolfe,)

Defendants.

This cause coming on at this time for further trial;

The motion of plaintiff to amend its complaint having been granted and

The motion of defendant Gill to amend answer having been granted to conform to the proofs and issues raised and

It is by the court ordered that plaintiff file its brief within twenty days, that defendant have twenty days to answer and that plaintiff have ten days to reply thereto; and the court having thereupon ordered that a date for oral argument be set after said briefs have been filed, the court takes a recess in this cause at the hour of 3:45 o'clock P. M.

UNITED STATES OF AMERICA

District Court of the United States Southern District
of California

Frances Investment Co., a corp.,)	
	)	CLERK'S OFFICE
v.	)	No. Eq. D-61
	)	PRAECIPE
Jasper Thomason, et al.,)	

TO THE CLERK OF SAID COURT:

Sir:

Please issue enter a decree pro confesso against the defendant Jasper Thomason.

Wm. Story, Jr.

Joseph L. Lewinson

Attys for plf

FILED OCT. 12, 1923 CHAS. N. WILLIAMS,
Clerk By Edmund L. Smith Deputy Clerk

IN THE DISTRICT COURT OF THE UNITED STATES IN AND FOR THE SOUTHERN DISTRICT OF CALIFORNIA SOUTHERN DIVISION.

Frances Investment Company,)	
a corporation,)	
)	
Plaintiff,)	
vs.	)	No. D 61 Equity
)	
Friend J. Austin, et al.,)	
)	
Defendants.)	

Subpoena in the above entitled action having been duly served upon defendant, —JASPER THOMASON on the 13th. day of May, 1921, in the County of Los Angeles, State and Southern District of California, and the time within which said defendant should have filed his answer or other defense to the bill in the Clerk’s Office having expired, and no answer or other defense to the bill having been filed in the Clerk’s Office on behalf of the said defendant, Now, Therefore, on motion of Wm. Story, Esq. and Joseph Lewinsohn, Esq. Solicitors for the complainant, it is ordered that the Default of said defendant JASPER THOMASON be and the same hereby is entered herein, and that complainants’ said bill of complaint be and the same hereby is taken pro confesso as against said defendant JASPER THOMASON, and that all the matters and things therein prayed for be decreed accordingly.

CHAS. N. WILLIAMS, Clerk
 By R S Zimmerman, Deputy Clerk
 FILED AND ENTERED OCTOBER 12, 1923.
 CHAS. N. WILLIAMS, Clerk
 By R S Zimmerman, Deputy Clerk

IN THE DISTRICT COURT OF THE UNITED STATES, SOUTHERN DISTRICT OF CALIFORNIA, SOUTHERN DIVISION.

FRANCES INVESTMENT)
COMPANY, a corporation,)
)
Plaintiff,)

v.)

FRIEND J. AUSTIN, LET-)
TIE M. AUSTIN, HIS WIFE,)
WILLIAM MARTIN BEL-)
FORD, ANNIE MARIE BEL-)
FORD, HIS WIFE, THE)
PEOPLES ABSTRACT &)
TITLE COMPANY, a cor-)
poration, H. F. DAVIS AND)
MERYLE T. DAVIS, HIS)
WIFE, JOHN W. AUSTIN)
AND LAURA A. AUSTIN,)
HIS WIFE, JASPER THOM-)
ASON, JESSE BOYD PIL-)
CHER, THOMAS EDWIN)
GILL AND MYRA RIT-)
ZINGER GILL, HIS WIFE,)
HARRY D. ARON, T. P.)
BANTA, ROBERT B. WALK-)
ER, JOHN DOE, RICHARD)
DOE, JOHN ROE, RICHARD)
ROE, SARAH DOE, JANE)
DOE, SARAH ROE, JANE)
ROE, A-1 COMPANY, a cor-)
poration, B-1 COMPANY, a)
corporation, C-1 COMPANY, a)
corporation, IMPERIAL)
WATER COMPANY NO. 1,)
IMPERIAL WATER COM-)
PANY NO. 3, IMPERIAL)
WATER COMPANY NO. 5,)

IN EQUITY

Eq. D-61

FINAL DECREE

forth in the bill of complaint, and by the assignment and transfer of promissory notes, mortgages, shares of water stock, and other personal property, as set forth in said bill of complaint; and plaintiff has had, and now has a prior and first lien upon the real and personal property described in said trust deed and said mortgages, and as alleged in said bill of complaint, including the water stock and promissory notes mentioned therein.

3. That the proceeding for registration of title referred to in said bill of complaint, supplemental bill of complaint and amended supplemental bill of complaint, which has resulted in a decree of registration made and entered on or about December 7, 1917, was instituted and conducted for the purpose of defrauding plaintiff of its security, as aforesaid, or a considerable portion hereof, and the decree rendered therein was procured by fraud upon the court that rendered the same; that plaintiff herein was intentionally omitted as a party to said proceeding, and said decree is not binding on plaintiff herein; all as alleged in said bill of complaint, said supplemental bill of complaint and said amended supplemental bill of complaint. (For brevity said bill of complaint, said supplemental bill of complaint and said amended supplemental bill of complaint are all together hereinafter sometimes referred to as "bill of complaint", and the term "bill of complaint" is sometimes used as including supplemental bill of complaint and/or amended supplemental bill of complaint, and shall be taken to mean the pleading which is appropriate. All of the allegations in said

bill of complaint, supplemental bill of complaint, an amended supplemental bill of complaint shall be deemed to be incorporated herein by reference.)

4. That subsequent to October 1, 1917, the real and personal property above referred to, which had theretofore been mortgaged, transferred, assigned, and/or pledged to plaintiff as security for aforesaid indebtedness, was transferred and conveyed to the various defendants as alleged in the bill of complaint; that at the respective times of said transfers, and at all times since, said defendants, and each of them, had knowledge and notice that the defendants Friend J. Austin and Lettie M. Austin were indebted to plaintiff in accordance with the terms of the aforesaid promissory note, and that said promissory note was secured as in said bill of complaint alleged; and in particular at the time of the transfer of a certain parcel of the real estate before referred to, together with certain water stock, to the defendants T. Edwin Gill and Myla Ritzinger Gill, as in said bill of complaint alleged, and as in their answer alleged, to which reference is hereby made, the said defendants T. Edwin Gill and said Myla Ritzinger Gill had such knowledge and notice; that none of the defendants, including said T. Edwin Gill and Myla Ritzinger Gill, were or are bona fide purchasers for value, and without notice of plaintiff's rights in the premises.

5. That the rights and claims of the defendants in and to the property securing the before mentioned indebtedness to plaintiff or to any part thereof, and in particular the rights and claims of the defendants

T. Edwin Gill and Myla Ritzinger Gill are junior, subject and subordinate to the liens, claims and charges of plaintiff under the aforesaid deed of trust, mortgages, pledges, assignments, and transfers of real and personal property, including water stock referred to in said bill of complaint.

6. That plaintiff is entitled to the foreclosure and sale of its security as aforesaid, in accordance with the terms of said trust deed, mortgages, pledges, assignments and transfers, as alleged in its bill of complaint, and to the appointment of a receiver of the real and personal property comprising said security, pending the sale thereof, and to an accounting from each and all of the defendants for the rents, issues, profits, fruits and avails of any real or personal property comprising said security, or any part thereof, that said defendants, or any of them, may have reaped or enjoyed since October 2, 1917, on which date said proceeding for registration was commenced, and for the application of the same to the satisfaction of the before mentioned indebtedness to plaintiff.

7. That L. M. Chapman be, and he hereby is appointed Special Master, and is empowered, authorized, ordered and directed to foreclose and sell said property comprising plaintiff's security, and each and all thereof, in accordance with the terms and provisions of the various instruments creating the same, with the same force and effect as if he were specially named therein, and in accordance with the provisions of the statutes of California relative to pledges, and such other provisions of the statutes of California as

may be applicable, or in the alternative in accordance with the practice of this court, and the further directions of the court; and as such Special Master he is also empowered and authorized to take an accounting between the plaintiff and the defendants, or any of them, wherever provided for in this decree, in accordance with the practice and further directions of this court. And in that behalf said Special Master is authorized and empowered to appoint times and places for hearing, issue, subpoenas, administer oaths, and take evidence, both oral and documentary.

8. That if the money arising from the sale of the property comprising plaintiff's security, as aforesaid, shall be insufficient to pay the amount found due plaintiff, as above stated, with interest and costs and expenses of sale, including the expenses of the receiver hereinafter named, and of said Special Master, said Special Master shall specify the amount of such deficiency on his report to the court, and on the coming in of said report, judgment of this court shall be docketed for such balance against defendants Friend J. Austin and Lettie M. Austin, and against the defendants Jasper Thomason and H. F. Davis, but said judgment as to said Jasper Thomason and H. F. Davis shall be for not to exceed the highest and best value of the property comprising plaintiff's security at any time between October 2, 1917, and the date of this decree, together with the value of any of the fruits, avails, rents, issues and profits of said security, or any part thereof, that has come into the hands of said defendant H. F. Davis and said defendant Jasper Thomason,

and in that behalf it is found and adjudged that said defendants H. F. Davis and Jasper Thomason, together with the defendants Friend J. Austin and Lettie M. Austin and Meryle T. Davis committed all and singular the frauds charged against them in said bill of complaint, and said judgment is not made against said Meryle T. Davis because by inadvertence and mistake she was not served with process in said cause; and it is further ordered that said Special Master take all necessary and proper steps to fix the amount due under the terms hereof from said Jasper Thomason and H. F. Davis.

9. That Jerry H. Powell is appointed receiver of the properties comprising plaintiff's security, and each and all of them, and is ordered to take hold and conserve the same until the sale thereof by said Special Master, and while so holding the same to collect the rents, issues and profits thereof, and pay the same over to said Special Master from time to time, as soon as reasonably may be. Said receiver shall qualify by giving bond in the sum of \$5,000.00 in terms to be approved by the Clerk of this Court.

10. That the stipulation for decree heretofore entered into by and between the defendants Harry D. Aron, Paul H. Marley, Robert B. Walker, and the defendant John W. Wolfe on the one hand and plaintiff on the other, which is on file herein, and to which reference is made, is approved, and judgment rendered in accordance therewith, and said Special Master will respect and abide by said stipulation, but said stipulation shall not be deemed to restrict the relief granted

plaintiff hereby except as to the defendants named in said stipulation, and except further that the sums paid over to plaintiff by reason of the judgment on said stipulation and the sale of the lands therein described, shall be charged to the plaintiff and credited upon the aforesaid indebtedness to plaintiff.

11. That reference is hereby made to certain stipulations on file between plaintiff and defendants T. Edwin Gill and Myla Ritzinger Gill, and the defendants mentioned therein shall forthwith pay over to said Special Master sums due and payable by them in accordance with said stipulations.

12. That the allegations in subdivision Sixteenth of pleas and affirmative defenses in the separate answer of defendant Paul H. Marlay in so far as they relate to further security being given plaintiff in the form of a mortgage or trust deed on Utah lands and foreclosure of the same are true, and plaintiff shall proceed with reasonable diligence to cause sale to be made of the real property in Utah ordered to be sold by decree of the United States District Court for the State of Utah, and upon sale being made to furnish said Special Master with a certified copy of the proceedings in the United States District Court for the State of Utah showing said sale, the price realized thereupon and the money paid over to plaintiff thereunder; whereupon plaintiff shall be charged with the sum so actually paid over and credit be allowed defendants accordingly. Said Special Master shall not proceed to foreclose and sell the property comprising plaintiff's security hereinbefore mentioned until he shall

have been furnished with the report of said sale and proceedings in the United States District Court for the District of Utah, as aforesaid.

13. Said Special Master shall apply and disburse the moneys realized from the sale of the properties comprising plaintiff's security as aforesaid, in the following manner:

1st: The payment of all proper expenses attendant upon said sale or sales, including the expenses, outlays and compensation of the Special Master to make said sale or sales as approved by further order of this Court.

2nd: To the payment of the expenses, outlays and compensation of said receiver as fixed by further order of this court.

3rd: To the payment of the costs and expenses of this suit subsequent to the date of this decree, including counsel fees fixed and allowed by this court.

4th: To the payment of the indebtedness due plaintiff hereunder as aforesaid, with costs of suit taxed in accordance with the practice of this court as aforesaid, together with legal interest upon all of said sums from date hereof.

5th: If after making all of the above payments there shall be any surplus the same shall be paid according to the further order of this Court in that regard.

14. That all of the allegations of the bill of complaint, supplemental bill of complaint and amended supplemental bill of complaint are true except as herein otherwise expressly found, and except that the defend-

ants T. Edwin Gill, Myla Ritzinger Gill, Marlay, Aron, Walker and Wolfe were not parties to the conspiracy to defraud plaintiff, as alleged in said bill of complaint, and did not have direct personal knowledge of all of the facts and circumstances comprising the fraud charged in said bill of complaint, but said defendants were, nevertheless, at all times herein mentioned cognizant of facts and circumstances which were sufficient to excite suspicion, and did excite suspicion in their minds of the frauds charged in said bill of complaint, and said defendants, and each of them, in the exercise of reasonable, or any diligence, would have discovered all of the facts and circumstances of the frauds charged in said bill of complaint, and as a matter of fact and law were at all times herein chargeable therewith.

15. That jurisdiction of this cause is retained by this court for the purpose of enforcing this decree and granting relief in furtherance or execution of the same or supplemental thereto, and plaintiff may apply to the court for further orders and directions at the foot of the decree.

16. The following real property, among others, is affected by this decree:

The following described premises situate in Imperial County, California, viz:

The East one half ($\frac{1}{2}$) of Section twenty (20), Township twelve (12) South, Range fourteen (14) East, San Bernardino Meridian, containing 320 acres, more or less, together with 300 shares of the capital stock of Imperial Water Company No. 3, a corporation

organized and existing under the laws of California, some time evidenced by Certificates Nos. 149 and 463 of said Company, for 150 shares each.

Also the following described premises situate in Imperial County, California, viz:

The Southwest Quarter of Section four (4), Township twelve South, Range Fifteen (15) East, S. B. B. & M., together with the water right thereto, some time evidenced by Certificate No. 14 for 150 shares of the stock of Imperial Water Company No. 3, a corporation organized under the laws of California.

Also the following described premises situate in Imperial County, California, viz:

The Southeast Quarter of the Northwest Quarter, the Southwest Quarter of the Northeast Quarter, and Lots eight (8) and Ten (10) of Section three (3), Township Fourteen (14) South, Range sixteen (16) East, S. B. B. & M., together with the water rights therefor, some time evidenced by Certificate No. 2303 for 134 shares of the capital stock of Imperial Water Company No. 5, a California corporation.

\$5000.00 of attorneys fees shall be chargeable against parcels transferred to defendants Gill and Gill.

That any and all cross-bills and counter-claims on file be and the same are hereby dismissed.

Dated March 24, 1925.

Benjamin F. Bledsoe
District Judge.

Costs are taxed at \$248.98/100

Decree entered and recorded MAR. 24, 1925

CHAS. N. WILLIAMS, CLERK

BY: Edmund L. Smith, Deputy Clerk.

[Endorsed]: No. Eq. D-61 IN THE United States District Court SOUTHERN DISTRICT OF CALIFORNIA Southern Division Frances Investment Company, a corporation, Plaintiff vs. Friend J. Austin, et al, Defendant FINAL DECREE FILED MAR 24, 1925 CHAS. N. WILLIAMS, Clerk by Edmund L Smith Deputy Clerk LEWINSON & BARNHILL 215 West Seventh Street Los Angeles Telephone Metropolitan 0330 Attorneys for Plaintiff

IN THE DISTRICT COURT OF THE UNITED STATES IN AND FOR THE SOUTHERN DISRICT OF CALIFORNIA, SOUTH-ERN DIVISION.

FRANCES INVESTMENT)	
COMPANY,	)	In equity
a corporation,)	
	)	Eq. D-61
	)	Plaintiff,
	)	vs.
	)	PRAECIPE FOR
	)	ENTRY OF SPE-
FRIEND J. AUSTIN, et al.,	)	CIAL APPEAR-
	)	ANCE
Defendants.)	

TO THE CLERK OF THE ABOVE NAMED COURT:

You are hereby requested and directed to enter the special appearance of the defendant Jasper Thomason in the above entitled action, who appears specially herein through the undersigned, his solicitors, for the sole purpose of moving this Court to quash service of

subpoena herein, and to vacate and set aside that certain order pro confesso made herein on the 12th day of October, 1923, and to vacate and set aside as to said defendant, the "final decree" entered herein on the 24th day of March, 1925, upon the ground that this Court has not and at no time has had jurisdiction over the person of said defendant. The said defendant does not appear generally in the said cause, but makes a special appearance only for the purpose of contesting the jurisdiction of the Court over his person.

Dated this 15th day of April, 1925.

WM. T. KENDRICK

NEWLIN & ASHBURN

Solicitors for Defendant Jasper Thomason, so appearing specially herein.

[Endorsed]: IN EQUITY No. Eq. D-61-J In the United States District Court, In And For The SOUTHERN DISTRICT OF CALIFORNIA, Southern Division FRANCES INVESTMENT COMPANY a corporation Plaintiff vs. FRIEND J. AUSTIN, et. al. Defendants PRAECIPE FOR ENTRY OF SPECIAL APPEARANCE FILED APR 15, 1925 CHAS. N. WILLIAMS, Clerk By R S Zimmerman Deputy Clerk NEWLIN & ASHBURN 935 Title Insurance Building Telephone Main 0159 Los Angeles, Cal. Defendant Solicitors for Defendant Jasper Thomason appearing Specially

IN THE DISTRICT COURT OF THE UNITED STATES IN AND FOR THE SOUTHERN DISTRICT OF CALIFORNIA, SOUTHERN DIVISION

FRANCES INVESTMENT COMPANY, a corporation)

Plaintiff,)

vs)

FRIEND J. AUSTIN, LETTIE M. AUSTIN, HIS WIFE, WILLIAM MARTIN BELFORD, ANNIE MARIE BELFORD, HIS WIFE, THE PEOPLES ABSTRACT & TITLE COMPANY, a corporation H. F. DAVIS AND MERYLE T. DAVIS, HIS WIFE, JOHN W. AUSTIN AND LAURA A. AUSTIN, HIS WIFE, JASPER THOMASON, JESSE BOYD PILCHER, THOMAS EDWIN GILL AND MYRA RITZINGER GILL, HIS WIFE, HARRY D. ARON, T. P. BANTA, ROBERT B. WALKER, JOHN DOE, RICHARD DOE, JOHN ROE, RICHARD ROE, SARAH DOE, JANE DOE, SARAH ROE, JANE ROE, A-1 COMPANY, a corporation, B-1 COMPANY, a corporation, C-1 COMPANY, a corporation, IMPERIAL WATER COMPANY No. 1, IMPERIAL WATER COMPANY NO. 3,)

IN EQUITY
Eq. D-61-J
MOTION TO
QUASH SERVICE OF SUBPOENA, ETC.

IMPERIAL WATER COM-)
 PANY NO. 5, WADE N.)
 BOYER AND LEAH A.)
 BOYER, his wife,)
 Defendants.)

Now comes the defendant Jasper Thomason, appearing specially herein, for the sole purpose of making this motion and not appearing generally herein, and now moves this Honorable Court for an order quashing service of subpoena upon him, the said defendant in the above entitled action, and vacating and setting aside that certain order Pro Confesso made in the above entitled action on the 12th day of October, 1923, and vacating and setting aside as to this defendant that certain "Final Decree" entered in this cause on the 24th day of March, 1925. This motion is made upon the grounds that no subpoena in this cause was ever delivered to this defendant personally and that the only service or attempted service of subpoena herein was made by leaving a copy thereof with Rosamond Mildred Thomason on the 13th day of May, 1921, at a time when the said Rosamond Mildred Thomason was under the age of eighteen years and was not an adult person; that no service or attempted service of subpoena herein was made upon any other person or at any other time than upon the said Rosamond Mildred Thomason on said 13th day of May, 1921; that this defendant has not heretofore been served in the manner required by law with subpoena in this action nor has he voluntarily appeared herein nor has he waived due service of process upon him, and that this court is now and has been at all times

without jurisdiction over the person of this defendant, who has appeared and who appears herein solely and only for the purpose of making this motion on the ground of want of jurisdiction over his person.

Dated this 27th day of April, 1925.

Wm. T. Kendrick

Newlin & Ashburn

Solicitors for said defendant so appearing specially herein.

[Endorsed]: IN EQUITY No. Eq. D-61-J In The UNITED STATES DISTRICT COURT, In and For The Southern District Of California, Southern Division FRANCES INVESTMENT COMPANY a corporation Plaintiff vs FRIEND J. AUSTIN, et. al. Defendants MOTION TO QUASH SERVICE OF SUBPOENA, ETC. FILED APR 27 1925 CHAS. N WILLIAMS, Clerk By Edmund L. Smith deputy clerk W. T. Kendrick NEWLIN & ASHBURN 935 Title Insurance Building Telephone Main 0159 Los Angeles, Cal. Solicitors for Defendant Jasper Thomason appearing specially.

IN THE DISTRICT COURT OF THE UNITED STATES, SOUTHERN DISTRICT OF CALIFORNIA, SOUTHERN DIVISION.

FRANCES INVESTMENT)
COMPANY, a corporation,)
)
Plaintiff,)
)
vs.)
)

FRIEND J. AUSTIN, LET-)
 TIE M. AUSTIN, HIS WIFE,)
 WILLIAM MARTIN BEL-)
 FORD, ANNIE MARIE BEL-)
 FORD, HIS WIFE, THE)
 PEOPLES ABSTRACT & TI-)
 TLE COMPANY, a corpora-)
 tion, H. F. DAVIS AND)
 MERYLE T. DAVIS, HIS)
 WIFE, JOHN W. AUSTIN)
 AND LAURA A. AUSTIN,)
 HIS WIFE, JASPER THOM-)
 ASON, JESSE BOYD PIL-)
 CHER, THOMAS EDWIN)
 GILL AND MYRA RITZ-)
 INGER GILL, HIS WIFE,)
 HARRY D. ARON, T. P.)
 BANTA, ROBERT B.)
 WALKER, JOHN DOE,)
 RICHARD DOE, JOHN ROE,)
 RICHARD ROE, SARAH)
 DOE, JANE DOE, SARAH)
 ROE, JANE ROE, A-1 COM-)
 PANY, a corporation, B-1)
 COMPANY, a corporation, C-1)
 COMPANY, a corporation,)
 IMPERIAL WATER COM-)
 PANY NO. 1, IMPERIAL)
 WATER COMPANY NO. 3,)
 IMPERIAL WATER COM-)
 PANY NO. 5, WADE N.)
 BOYER and LEAH A.)
 BOYER, HIS WIFE,)
 Defendants.)

IN EQUITY.
 Eq. D-61-J
 NOTICE OF
 MOTION FOR
 CONTINUANCE.

To the defendant, JASPER THOMASON, and
 MESSRS. WILLIAM T. KENDRICK and NEWLIN
 & ASHBURN, his attorneys:

YOU, AND EACH OF YOU, WILL PLEASE
 TAKE NOTICE, that plaintiff will appear before the

court on Monday, April 27, 1925, at Los Angeles, California, at the opening of court, or as soon thereafter as counsel can be heard, and then and there move the court for a continuance of the hearing on said defendant's notice of special appearance and motion to quash service of subpoena, etc. Said motion will be on the ground that Joseph L. Lewinson, of counsel for plaintiff and the only counsel familiar with the facts of said case, will be engaged in the trial of a cause in one of the jury departments of the Superior Court of California in and for the County of Los Angeles, and on the further ground that said counsel's engagements have prevented him from preparing to resist the affidavits filed in support of said motion, and on the further ground that the facts stated in said affidavits are untrue insofar as they purport to impeach the return of the marshal on file herein and on the further ground that said affidavits should not be entertained by the court without the personal attendance of the makers thereof and their cross-examination.

Said motion will be based upon the records, files, decree and proceedings in said cause and the reporter's transcript of the testimony therein.

Dated at Los Angeles, California, April 25, 1925.

Wm Story, Jr

Joseph L Lewinson

Attorneys for Plaintiff.

[Endorsed]: No. D-61-J IN THE United States District Court SOUTHERN DISTRICT OF CALIFORNIA Southern Division FRANCES INVESTMENT COMPANY Plaintiff vs. FRIEND J. AUS-

TIN, ET AL Defendant NOTICE OF MOTION FOR CONTINUANCE. Receipt of a copy of the within is hereby admitted this Notice day of April 25 1925 Newlin & Ashburn Wm T Kendrick Attorneys for Jasper Thomason Time of service is shortened to one day. Dated April 25, 1925. W P James Judge FILED APR. 27, 1925 CHAS. N. WILLIAMS, Clerk By Murray E Wire LEWINSON & BARNHILL 215 West Seventh Street Los Angeles Telephone Metropolitan 0330 Attorneys for Plaintiff.

IN THE DISTRICT COURT OF THE UNITED STATES, SOUTHERN DISTRICT OF CALIFORNIA, SOUTHERN DIVISION.

FRANCES INVESTMENT)	
COMPANY, a corporation,)	IN EQUITY.
	) Eq. D-61-J.
Plaintiff,)	AFFIDAVIT OF
	) JOSEPH L. LEW-
vs	) INSON. IN SUP-
	) PORT OF MOTION
FRIEND J. AUSTIN, et al.,)	FOR CONTINU-
	) ANCE.
Defendants.)	

UNITED STATES OF AMERICA,)	
	) SS.
State of California, County of Los Angeles)	

Joseph L. Lewinson being first duly sworn, on oath deposes and says:

I am one of the attorneys of record for plaintiff in said cause. The other attorney of record is William Story, Jr., who resides at Salt Lake City, Utah, and has his office at said place. Said cause has been pending in this court for upwards of seven years and I am

the only counsel for plaintiff familiar with the details thereof.

The marshal's return upon the subpoena ad respondendum directed to defendant Jasper Thomason was made on May 13, 1921 and is in words and figures following:

"UNITED STATES MARSHAL'S OFFICE)
SOUTHERN DISTRICT OF CALIFORNIA)ss.

I HEREBY CERTIFY, that I have received the within writ on the 9th day of May, 1921, and personally served the same on the 13th day of May, 1921, on Jasper Thomason and ~~Meryle F. Davis~~ by delivery to and leaving with Miss Thomason for Jasper Thomason said defendants named therein, personally, at the County of Los Angeles in said district, a copy thereof.

C. T. WALTON

U. S. Marshal

By W. S. Walton

Deputy

Los Angeles,
May 13, 1921.'

By leave of court first had and obtained, said return was amended on April 4, 1923 and, as amended, is in words and figures following:

"Amended Return
Frances Investment Co
vs. D.61
Friend J. Austin et al.

UNITED STATES MARSHAL'S OFFICE)
SOUTHERN DISTRICT OF CALIFORNIA)

I hereby certify and return, that I received the within writ on the 9th day of May, 1921, and personally

served the same on the 13th day of May, 1921, on Jasper Thomason by delivering to and leaving with Miss Thomason, an adult person, who is a member or resident in the family of Jasper Thomason, said defendant named herein, at the County of Los Angeles, in said district, an attested copy thereof, at the dwelling house or usual place of abode of said Jasper Thomason, one of the said defendants herein.

C. T. WALTON

U. S. Marshal

By W. S. WALTON

Deputy

Los Angeles, California,
October 4, 1923.”

About the time said return was amended, Meryle Thomason Davis, who is a daughter of defendant Jasper Thomason, testified that said Jasper Thomason had an adult daughter residing in his household on May 13, 1921 and prior and subsequent thereto, and said Deputy United States Marshal who signed said return and said amended return advises affiant that he had served said subpoena as in said amended return set forth.

That said cause was tried in the summer and fall of 1923 and was thereafter argued and submitted and the decree in said cause was made and entered on March 24, 1925; that by said decree, after hearing extended oral and documentary evidence, the court found that said Jasper Thomason was guilty of the gravest frauds charged against him in the amended supplemental bill of complaint.

Your affiant charges that it is clear to a moral certainty that said Jasper Thomason personally received said subpoena ad respondendum from his daughter and in that connection states: It is charged in said amended supplemental bill of complaint that one H. F. Davis and one Meryle Thomason Davis participated with said Jasper Thomason in the frauds found by the court to have been committed by said Thomason; that said H. F. Davis was up to and including the trial of said cause, a son-in-law of said Jasper Thomason, and said Meryle Thomas Davis is a daughter of said Jasper Thomason; that said Davis was a defendant in said cause and an attorney for numerous other defendants therein. Said Meryle Thomason Davis was a witness in said cause and said Jasper Thomason was subpoenaed as a witness and evaded service of such subpoena; that in order to serve such subpoena, plaintiff not only placed the same in the hands of the United States Marshal, but also procured an order for the service of the same by private persons and employed the Pinkerton National Detective Agency to serve the same. Said agency employed numerous operatives to locate said Thomason and serve said subpoena, but said Thomason evaded process; that at the time of the trial of said cause, said H. F. Davis did not appear although charged with frauds of the gravest character, and at said trial, said Meryle Thomason Davis testified that said H. F. Davis, who was her husband, was at the time in the Republic of Mexico and that said Jasper Thomason was at a place unknown and beyond the reach of communication in the mountains of Kern County.

That the facts in said case are complicated and involve numerous transactions; that in order to test the credibility of the affiant, it would take at least two days to cross-examine Jasper Thomason. Affiant verily believes said Thomason would not submit to said cross-examination for fear of contempt of court and prosecution for perjury thereof.

That affiant has not had an opportunity to examine the authorities but is of the opinion, from his experience in similar matters, that said Jasper Thomason, in addition to not speaking the truth in his affidavit, is barred by laches and also as a matter of law, said Thomason cannot impeach the marshal's return and if said return is false, it is remitted to remedy in damages against said marshal. Affiant further believes that an examination of the authorities would show that said motion to quash is a collateral attack upon the decree and should not be entertained by the court; that said motion was originally noticed for April 20, 1925 and was continued one week by stipulation of the parties at your affiant's request. At the time said request was made, your affiant was unaware that it would be necessary for him to try the jury case before referred to on April 27, 1925; that he did not have the trial date of same noted on his diary and inadvertently failed to examine his office calendars; that he had not given said jury case attention for over one year and did not have the same in mind; that if said jury case were continued, the continuance would seriously prejudice affiant's client's rights; that the rights of said Jasper Thomason will not be injuriously or at all affected if

said motion is continued for two weeks, or such other time as may be fixed by the court; that affiant has been actively engaged in emergency matters of gravity and importance since first receiving notice of said motion and has had no opportunity to prepare to meet the same.

WHEREFORE, affiant prays a continuance and a hearing on oral testimony at such time as the court may appoint.

Joseph L. Lewinson

Subscribed and sworn to before me this
25th day of April, 1925.

Cora A. Campbell

Notary Public in and for the County of Los Angeles,
State of California.

(Seal)

Endorsed: Original No. D-61-J In The United States District Court SOUTHERN DISTRICT OF CALIFORNIA Southern Division FRANCES INVESTMENT COMPANY Plaintiff vs. FRIEND J. AUSTIN, ET AL Defendant AFFIDAVIT OF JOSEPH L. LEWINSON. Receipt of a copy of the within is hereby admitted this Affidavit day of April 25 1925 Newlin & Ashburn Wm T. Kendrick Attorneys for Jasper Thomason FILED APR 27 1925 CHAS. N. WILLIAMS Clerk By Murray E Wire Deputy Clerk LEWINSON & BARNHILL 215 West Seventh Street Los Angeles Telephone Metropolitan 0330 Attorneys for Plaintiff.

At a stated term, to-wit: the January term A. D. 1925, of the District Court of the United States of America within and for the Southern Division of the Southern District of California, held at the Court room thereof in the city of Los Angeles on Monday the 27th day of April in the year of our Lord one thousand nine hundred and twenty-five;

Present:

The Honorable WM. P. JAMES, District Judge.

Frances Investment Co.,)	
	Plaintiff,)	
vs.	)	No. D-61 Eq.
Friend J. Austin, et al.,)	
	Defendants.)	

This cause coming before the Court on special appearance for hearing on motion to quash service of subpoena; J. L. Lewinsohn, Esq., appearing by Wm. A. Barnhill, Esq. in behalf of the plaintiff; attorney Ashburn, of Messrs. Newlin & Ashburn, appearing for the defendant, said Wm. A. Barnhill, Esq. files affidavit for a continuance, and Attorney Ashburn having opposed said continuance, and having filed affidavit in support of said opposition to a continuance, it is by the court ordered that the plaintiff have two days to file authorities and that this matter stand submitted.

IN THE DISTRICT COURT OF THE UNITED STATES SOUTHERN DISTRICT OF CALIFORNIA SOUTHERN DIVISION.

FRANCES INVESTMENT (IN EQUITY. COMPANY, a corporation,) Eq. D-61-J. Plaintiff,) AFFIDAVIT OF vs. (JOSEPH L. LEW-FRIEND J. AUSTIN, et al.,) INSON OPPOSING Defendants. (MOTION TO QUASH.

UNITED STATES OF AMERICA (State of California,)SS. County of Los Angeles. (

Joseph L. Lewinson being first duly sworn, on oath deposes and says:

I am one of the attorneys of record for plaintiff in said cause. The other attorney of record is William Story, Jr., who resides at Salt Lake City, Utah, and has his office at said place. Said cause has been pending in this court for upwards of seven years and I am the only counsel for plaintiff familiar with the details thereof.

The marshal's return upon the subpoena ad respondendum directed to defendant Jasper Thomason was made on May 13, 1921 and is in words and figures following:

"UNITED STATES MARSHAL'S OFFICE) SOUTHERN DISTRICT OF CALIFORNIA)ss.

I HEREBY CERTIFY, that I have received the within writ on the 9th day of May, 1921, and personally served the same on the 13th day of May, 1921, on Jasper Thomason and by delivery

to and leaving with Miss Thomason for Jasper Thomason said defendants named therein, personally, at the County of Los Angeles in said district, a copy thereof,

C. T. WALTON

U. S. Marshal

By W. S. Walton

Deputy

Los Angeles,

May 13, 1921.”

By leave of court first had and obtained, said return was amended on October 4, 1923 and, as amended, is in words and figures following:

UNITED STATES MARSHAL'S OFFICE)

SOUTHERN DISTRICT OF CALIFORNIA)

“Amended Return

Frances Investment Co.

vs.

D. 61

Friend J. Austin et al.

I hereby certify and return, that I received the within writ on the 9th day of May, 1921, and personally served the same on the 13th day of May, 1921, on Jasper Thomason by delivering to and leaving with Miss Thomason, an adult person, who is a member or resident in the family of Jasper Thomason, said defendant named herein, at the County of Los Angeles, in said district, an attested copy thereof, at the dwelling house or

usual place of abode of said Jasper Thomason, one of the said defendants herein.

C. T. WALTON

U. S. Marshal

By W. S. WALTON

Deputy

Los Angeles, California,

October 4, 1923.”

That on October 4, 1923 and during the course of the trial Meryle Thomason Davis, one of the defendants, and the daughter of defendant Jasper Thomason, testified that she herself was twenty-five years old; that her oldest sister was then twenty-six years old; that her sister next younger than herself was about twenty-two years old; that she did not remember whether her oldest sister was unmarried in 1921 or not; that with the exception of her youngest sister all her sisters were attending boarding school but were at home week-ends prior to being married; that said Deputy United States Marshal who signed said return and said amended return advises affiant that he served said subpoena as in said amended return set forth.

That said cause was tried in the summer and fall of 1923 and was thereafter argued and submitted and the decree in said cause was made and entered on March 24, 1925; that by said decree after hearing extended oral and documentary evidence, the court found that said Jasper Thomason was guilty of the gravest frauds charged against him in the amended supplemental bill of complaint.

Your affiant charges that it is clear to a moral certainty that said Jasper Thomason personally received said subpoena ad respondendum from his daughter and in that connection states: It is charged in said supplemental bill of complaint that one H. F. Davis and one Meryle Thomason Davis participated with said Jasper Thomason in the frauds found by the court to have been committed by said Thomason; that said H. F. Davis was, up to and including the trial of said cause, a son-in-law of said Jasper Thomason, and said Meryle Thomason Davis is a daughter of said Jasper Thomason; that said Davis was a defendant in said cause and an attorney for numerous other defendants therein. Said Meryle Thomason Davis was a witness in said cause and said Jasper Thomason was subpoenaed as a witness and evaded service of such subpoena; that in order to serve such subpoena, plaintiff not only placed the same in the hands of the United States Marshal, but also procured an order for the service of the same by private persons and employed the Pinkerton National Detective Agency to serve the same. Said agency employed numerous operatives to locate said Thomason and serve said subpoena, but said Thomason evaded process; that at the time of the trial of said cause, said H. F. Davis did not appear although charged with frauds of the gravest character, and at said trial, said Meryle Thomason Davis testified that said H. F. Davis, who was her husband, was at the time in the Republic of Mexico and that said Jasper Thomason was somewhere in Kern County, California, at a location which no one knew, but that she, Meryle

Thomason Davis, had talked to him during the previous week.

That if upon a consideration of plaintiff's "Memorandum of Points and Authorities", filed herewith, this Honorable Court shall nevertheless be of the opinion that the return of the marshal herein may be contradicted and that the other points made by plaintiff in said memorandum are not sufficient to warrant a denial of said motion, affiant prays that this motion be set down for hearing upon oral testimony; that the facts in said case are complicated and involve numerous transactions; that by reason of defendant Jasper Thomason's intimate personal relationship with other defendants, and by reason of the other matters and things herein averred, affiant verily believes that if said defendant Jasper Thomason and said defendant's daughter, Rosamond Thomason Hunt, are required to appear before this Honorable Court and by oral testimony support their contentions upon this motion, it will appear beyond question that this motion is not made in good faith but solely for purposes of delay, and that said defendant Jasper Thomason has been guilty of laches in prosecuting this motion, and that he had at all times knowledge of the pendency of this action and of proceedings therein taken against himself, and that he did in fact on or about May 13, 1921, receive from some member of his household the copy of the subpoena left by the marshal.

WHEREFORE, affiant prays that should this Honorable Court rule that said return of the marshal may be contradicted and that the points made by plaintiff in its said "Memorandum of Points and Authorities"

are not well taken, that this motion be set down for hearing upon oral testimony at such time as the Court may appoint.

Joseph L. Lewinson

Subscribed and sworn to before me
this 29th day of April, 1925.

Cora A. Campbell

Notary Public in and for the County of
Los Angeles, State of California.

(Seal)

[Endorsed]: No. Eq. D-61-J Dept..... In the District Court of the United States, Southern District of California, Southern Division. FRANCES INVESTMENT COMPANY, a corporation, Plaintiff vs. Friend J. Austin et al., Defendants. AFFIDAVIT OF JOSEPH L. LEWINSON OPPOSING MOTION TO QUASH FILED APR 29 1925 CHAS. N. WILLIAMS, Clerk By Edmund L. Smith Deputy Clerk Received copy of the within affidavit this 29 day of April 1925 for Jasper Thomason. WILLIAM STORY, Jr., and Newlin & Ashbarn Wm T. Kendrick Attorneys JOSEPH L. LEWINSON McCOMB & HALL Attorneys at Law 1014-15-16 Bank of Italy Bldg. Seventh & Olive Streets Los Angeles, Calif. Phone 821459 215 West Seventh Street Attorneys for Plaintiff

IN THE DISTRICT COURT OF THE UNITED STATES SOUTHERN DISTRICT OF CALIFORNIA SOUTHERN DIVISION.

FRANCES INVESTMENT)	IN EQUITY.
COMPANY, a corporation,)	Eq. D-61-J.
Plaintiff,)	
vs.)	AFFIDAVIT OF
FRIEND J. AUSTIN, et al,)	MERYLE THOMA-
Defendants.)	SON DAVIS.

- - - - -

UNITED STATES OF AMERICA,)	
State of California,)	SS.
County of Los Angeles.)	

MERYLE THOMASON DAVIS, being first duly sworn, on oath doth depose and say:

That she is the daughter of Jasper Thomason referred to as Meryle Thomason Davis in the affidavit of Joseph L. Lewinson, dated April 25th, 1925. That she has read the affidavit of said Lewinson. That it is not true as therein stated that affiant testified that said Jasper Thomason had an adult daughter residing in his household on May 13, 1921.

That affiant states upon her information and belief that all the testimony given on the subject of the age of Rosamond Mildred Hunt was taken down by shorthand reporter during the trial of the said action. That she has not before her the said testimony as taken down by the said reporter, nor any transcript of said testimony, nor has she seen any transcript of the testimony, but she appeals with confidence to the record as so taken in support of what she has just said. That her testimony and all the testimony given by her on the subject was given in the presence of

said Lewinson and he must know, and does know, that his statement in said affidavit of what she testified to is false, and affiant further says that whatever may be shown by the record, that it is not true that said Jasper Thomason had an adult daughter residing in his household on May 13th, 1921.

Further replying to said affidavit of said Lewinson, affiant says that it is not true that Jasper Thomason evaded service of any subpoena. It is true as shown by the record in this case that said original bill was filed in this action on the 15 day of February, 1918; that said Thomason was not made a party to the original action; but was brought into the action by supplemental bill on the 23 day of January, 1920. At that time he resided at No. 366 East Orange Grove Avenue, Pasadena, California, and continued to reside at that place until on or about the 1st day of September, 1920, and then changed his residence and resided at No. 1743 Eighth Street, Santa Monica, California, until on or about the 1st day of November, 1921, at which time he changed his residence and resided at No. 1319 11th Street, Santa Monica, California, from said last named date until on or about the 31st day of January, 1922. On the 31st day of January, 1922, he changed his residence from the last named residence to 1455 Burlingame Avenue, Brentwood Park, California. That during all the time aforesaid, up to the 26th day of August, 1923, said Thomason was continuously at his said residences respectively and could have been served with process during any of said time. That on the last named date said Jasper Thomason had important business to trans-

act in the State of Nevada for affiant, and at her request and in company with affiant drove by auto from his said home to Reno, Nevada, for the purpose of transacting that business and for no other purpose, as affiant verily believes, and was absent on said trip about six weeks and returned to his last named residence immediately thereafter, and has remained there ever since except for occasional short visits to his wife's ranch near Wineville, in Riverside County, California, and short business trips in the surrounding country.

That it is not true that the rights of said Jasper Thomason will not be injuriously affected if his motion to quash the service of process is continued for two (2) weeks. Upon the contrary, affiant states that said Thomason is suffering from a nervous breakdown and affiant is advised by his physicians that the suspense caused by the pendency of these proceedings lessens his chance for recovery, and that each day that this proceeding is pending lessens the chance of said Thomason's recovery from his present illness. In support of what affiant has just said, she attaches hereunto a letter signed by and delivered by Doctor H. G. Brainerd, which letter was delivered to her at her request and made a part of this affidavit.

Further affiant saith not.

Meryle Thomason Davis

SUBSCRIBED AND SWORN TO BEFORE
ME, this 27th day of April, 1925.

Chas N. Williams, Clerk U. S. District Court
Southern District of California.

By R. S. Zimmerman Deputy

Notary Public in and for the County
of Los Angeles, State of California.

(Seal)

To Hon. Judge James.

On Apr. 10th, 1925, I examined Jasper Thomason at his home in Brentwood Park. He is 65 yrs. of age, eating poorly, constipated, sleeping but little without hypnotics. He was irritable, confused, forgetful, and depressed. I obtained a history of a previous mental upset lasting several mos. about 15 yrs. ago and never had been as well mentally since then. When I examined him he was not of sound mind and believe that compelling him to appear in court would be very detrimental to his health.

Respt. yours,

(Signed) H. G. Brainerd, M. D.

Apr. 26th, 1925.

IN THE DISTRICT COURT OF THE UNITED
STATES, SOUTHERN DISTRICT OF CALI-
FORNIA, SOUTHERN DIVISION.

- - -

FRANCES INVESTMENT)	IN EQUITY.
COMPANY, a corporation,)	Eq. D-61-J
Plaintiff,)	
vs.)	AFFIDAVIT OF
FRIEND J. AUSTIN, et al,)	W. S. MORTEN-
Defendants.)	SEN

UNITED STATES OF AMERICA,)	
State of California,)	SS.
County of Los Angeles.)	

W. S. MORTENSEN, being duly sworn, on oath doth depose and say:

I am now and for more than twenty-one years last past have been a physician and surgeon, licensed to

practice my profession, and in active practice of medicine and surgery. That I reside at No. 7251 Motor Avenue, Palms, California, and have resided there continuously since the 1st day of June, 1909.

That I am well acquainted with Jasper Thomason, now residing at No. 1455 Burlingame Avenue, Brentwood Park, California. That I have this day examined the said Thomason and find that he is suffering from a nervous breakdown, which affects both his physical condition and his mental condition. That his condition is very serious; that he is in a highly nervous condition which affects his appetite, his digestion, and his ability to sleep, and his mentality is seriously impaired, so much so that at times he is not rational. That he is not now, and will not be, in my opinion, for some months to come able to appear in court and testify, without great danger to his life and to the impairment of his mind, nor is he now able to transact any business whatever without danger of injury both to mind and body.

That the said Thomason is not likely to be relieved of his present condition or to recover from his present affliction until some definite disposition is made of the business difficulties which now trouble his mind and affect injuriously his nervous condition.

Further affiant saith not.

W. S. Mortensen, M. D.

SUBSCRIBED AND SWORN TO BEFORE
ME THIS 26th day of April, 1925.

Charles E. Eagler

Notary Public in and for the County of
Los Angeles, State of California.

(Seal) My commission expires Oct. 9, 1927.

IN THE DISTRICT COURT OF THE UNITED
STATES, SOUTHERN DISTRICT OF CALI-
FORNIA, SOUTHERN DIVISION.

- - - - -	
FRANCES INVESTMENT)	IN EQUITY.
COMPANY, a corporation,)	Eq. D-61-J.
Plaintiff,)	
vs.)	AFFIDAVIT OF
FRIEND J. AUSTIN, et al,)	ROSAMOND MIL-
Defendants.)	DRED HUNT.
- - - - -	

UNITED STATES OF AMERICA,)	
State of California,)	SS.
County of Los Angeles.)	

ROSAMOND MILDRED HUNT, being first duly sworn, on oath deposes and says, in addition to her affidavit made in the above entitled action dated on the 7th day of April, 1925, that the subpoena ad respondendum referred to in the affidavit of Joseph L. Lewinson on motion for continuance, which affidavit is dated April 25, 1925, was never delivered to Jasper Thomason by her, and she verily believes that said subpoena was never delivered to said Jasper Thomason at any time.

That at the time said subpoena was left at the dwelling house of said Jasper Thomason, a copy thereof was offered to this affiant. She refused to receive it and did not take it into her possession or handle it at all. That the marshal, or the person who left the said subpoena, after offering it to affiant, threw it on the floor in her presence and it remained there for some time. At the time he offered the said subpoena to affiant she was on the inside of the house and there was

a screen door between herself and said marshall. She told the marshall at that time that she was not of age, and that she had no right or disposition to receive any papers for her father, that if he wanted to serve any papers upon her father or transact any business in which he was interested that he should see her father, and that he would probably be at home soon.

Affiant further says that the said subpoena left as aforesaid disappeared before the return of her said father, Jasper Thomason, and she verily believes that the said subpoena never came into the possession of her said father at any time.

Further affiant saith not.

Rosamond Mildred Hunt

SUBSCRIBED AND SWORN TO BEFORE ME
this 26th day of April, 1925.

Charles E. Eagler

Notary Public in and for the County
of Los Angeles, State of California.

My Commission Expires Oct. 9, 1927

(Seal.)

[Endorsed]: No. D-61-J. IN THE UNITED STATES DISTRICT COURT, SOUTHERN DISTRICT OF CALIFORNIA, SOUTHERN FRANCES INVESTMENT COMPANY, Plaintiff, -vs- FRIEND J. AUSTIN, ET AL Defendants. AFFIDAVITS OF MERYLE THOMASON DAVIS, W. S. MORTENSEN AND ROSAMOND THOMASON HUNT. Receipt of a copy of the within is hereby admitted this 27th day of April, 1925. Joseph L. Lewinson & Wm Story, Jr. Attorneys for Plaintiff.

FILED APR. 27, 1925 CHAS. N. WILLIAMS,
 Clerk By Murray E. Wire, Deputy Clerk NEWLIN
 & ASHBURN WM. T. KENDRICK 935 Title In-
 surance Bldg., Los Angeles, California. Attorneys for
 defendant Jasper Thomason.

IN THE DISTRICT COURT OF THE UNITED
 STATES, SOUTHERN DISTRICT OF CALI-
 FORNIA, SOUTHERN DIVISION.

FRANCES INVESTMENT)	
COMPANY, a corporation,)	IN EQUITY.
Plaintiff,)	
vs.)	Eq. D-61-J
FRIEND J. AUSTIN, et al,)	
Defendants.)	AFFIDAVIT.

UNITED STATES OF AMERICA,)	
State of California,)	ss.
County of Los Angeles.)	

MERYLE THOMASON DAVIS, being first duly
 sworn, deposes and says:

That since the making of her affidavit herein on
 the 27th day of April, 1925, she has procured access
 to the reporter's transcript of the evidence taken, and
 other proceedings had in the trial of the above-entitled
 action; that she has examined the transcript for the
 purpose of locating her testimony given at said trial
 on the subject of the age of her sister, Rosamond
 Mildred Hunt, and that she has copied from the said
 transcript those portions of the said record which re-
 late to her testimony on that subject, and that the
 following is a true, full and correct copy of the said
 transcript of her said testimony on that subject, to-wit:

At Book No. 5, Page 499:

“Mr. Lewinson:

Q. You have already been sworn as a witness in this case, and testified?

A. Yes, sir.

Q. During the month of May, 1921, were where you?

A. I have no idea.

Q. I beg your pardon?

A. I have no idea.

Q. Where were you in January, 1921?

A. I likewise have no idea.

Q. You mean to tell the Court you have no idea whatever as to what community you were in, whether you were in Los Angeles, Imperial Valley or Reno, or Antelope Valley?

A. For the last six or seven years I have not been in any one place for more than one or two months at a time, consequently I cannot say.

Q. This is the year 1923.

A. Yes.

Q. Where were you last Christmas?

A. I was in Brentwood Park.

Q. I didn't hear you, Madam.

A. Last Christmas, I said, I was in Brentwood Park.

Q. In Brentwood Park?

A. Yes.

Q. Were you at the residence of your father?

A. Yes.

Q. Where were you the previous Christmas, the Christmas of 1921?

A. I think I was in Culiacan, Sinoloa, Mexico.

Q. Where were you on the 4th of July, 1921?

A. I don't remember the 4th of July.

Q. Who were the members of your father's family or household?

A. Who were the members? What do you mean?

Q. Who are now? Do you have any brothers or sisters?

A. I have three sisters, and my mother and father.

Q. Where do your three sisters live?

A. One sister lives in Santa Monica, and two sisters are living in San Pedro.

Q. You have two sisters living in San Pedro? Are all of your sisters married?

A. Yes.

Q. Were they all married during the year 1921?

A. Yes.

Q. How many of them were unmarried during the year 1921?

A. I don't know the year my oldest sister was married; I don't know whether she was unmarried in 1921 or not.

Q. When were your two younger sisters married?

A. My youngest sister was married in July this year.

Q. When was your next youngest sister married?

A. My oldest sister, I don't know, she was—I don't know whether she was married or unmarried; I don't know what year she was married.

Q. Was it one year ago or more than one year, or two?

A. It seems to me it has been two or three years.

Q. Did your unmarried sisters live at your father's household prior to being married:

A. They attended boarding school and were at home week-ends.

Q. They were home at times?

A. At week-ends.

Q. Did they both attend boarding school?

A. My youngest sister did not.

Q. Your youngest sister was at home?

A. Yes, she has been at home.

Q. She was at home up to the time of her marriage?

A. So far as I know.

Q. Well, you did know, didn't you?

A. I don't remember; I haven't been in very close touch with her for years.

Q. You do not know of any other abode that she had?

A. My sister?

Q. Yes, your youngest sister?

A. No.

Q. How old is your youngest sister now?

THE COURT: What is the purpose of all this?

MR. LEWINSON: This is very material, Your Honor. I am going to ask an amendment of the Marshal's return in order to bind the defendant Thomason personally. Release is asked against him and he is a defendant in the case.

THE COURT: Even so, what has this got to do with it?

MR. LEWINSON: I will say, Your Honor, that on the Marshal's return the Marshal makes return of having served Mrs. Thomason without stating the facts required by the statute, namely, whether the person who was served was at the dwelling house or usual place of abode of the defendant. I understand that the deputy who made this service is out of the District and the Marshal is averse to filing a supplemental return without some showing in the matter. I think it is important, not only from our standpoint, but the standpoint of the defendant Gill, that the return be amended so that full justice may be done. Under the authorities we would be entitled if the Court should so find, to judgment against Jasper Thomason, and the Court might arrange its judgment so that the defendant Gill would have some relief against the defendant Jasper Thomason—

THE COURT: You do not seem to be moving toward that with any degree of celerity. If you want to amend the special return, it seems to me that it could be done by somebody acquainted with the fact shown by the return heretofore filed.

MR. LEWINSON: The deputy who made the return is in Seattle, and is not available, and the Marshal that made the return is now out of office. We will show in connection with the case that we made repeated efforts to serve the defendant Thomason when the case was set in July and that he avoided service.

THE COURT: Can you amend a return by merely showing he has avoided service?

MR. LEWINSON: Our position is this, that service was properly made and the evidence of re-service was not properly before the Court.

THE COURT: Does this witness know anything about that?

MR. LEWINSON: She has already testified about that—that her sisters were members of her father's household. That is the first step in the proceeding.

THE COURT: All right. Go ahead.

MR. LEWINSON: Q. How old is your other sister?

A. My oldest sister is 26.

Q. How old is your other sister? Your third sister?

A. My sister younger than I, next younger than I, is, well, she must be approximately,—she is a year and a half younger than I, and I am 25, so she must be about—

Q. In the fall of 1917 were you working in your husband's office as stenographer?

.

At Book 5, Page 538:

MR. MORTON: Your Honor, Mrs. Davis, asked me to ask her one or two questions regarding a matter which Mr. Lewinson took up, as to the service, or attempted service, on her father, which, with your Honor's permission, I would like to ask her. What is the name of the daughter who is shown by the return to have been served?

MR. LEWINSON: The return doesn't show which daughter it was. I will state this, the Marshal has

since amended his return so the examination this morning has no further relevancy in the case.

MR. MORTON: The witness desired to explain the matter and if the Court desires to hear it I will interrogate her.

THE COURT: Not unless the matter is of some moment.

A. Your Honor, I think my testimony this morning was misinterpreted.

THE COURT: If she wants to change her testimony or explain it, all right.

MR. MORTON: That is all I wanted, your Honor.

Q. You may explain it.

A. Mr. Lewinson was questioning me in regard to the ages of my sisters but he stopped his questioning before I had explained that my youngest sister was at this time 19 years of age and at the time of the attempted service on her was 17 years of age. He stopped his questioning and I gave the impression that my sisters were all of considerably greater years.

Q. BY MR. LEWINSON: As a matter of fact didn't you state this morning that you youngest sister was 19 years of age?

A. My youngest sister at the present time is 19 years of age.

Q. That is what you stated this morning, wasn't it?

A. Yes, sir.

Q. And you state to the Court now that service was made upon your youngest sister. How do you know service was made on your youngest sister?

A. She told me.

MR. LEWINSON: I move—well it doesn't make any difference. It cant' impeach the Marshal's return anyway. That is all."

Meryle Thomason Davis

Subscribed and sworn to before me this 30th day of April 1925.

Raymond L Haight (Seal)

Notary Public in and for the County
of Los Angeles, State of California.

[Endorsed]: No. Eq. D-61-J IN THE United States District Court, IN AND FOR THE SOUTHERN DISTRICT OF CALIFORNIA, SOUTHERN DIVISION FRANCES INVESTMENT COMPANY, a corporation Plaintiff vs. FRIEND J. AUSTIN et al Defendants AFFIDAVIT Received copy of the within this 30th day of April 1925 Lewinson & Barnhill Attorneys for Plaintiffs Filed August 5th 1925 Chas. N. Williams Clerk R S Zimmerman Deputy Wm. T. Kendrick NEWLIN & ASHBURN 935 Title Insurance Building Telephone Main 0159 LOS ANGELES, CAL. Solicitors for Jasper Thomason Appearing Specially

IN THE DISTRICT COURT OF THE UNITED
STATES, SOUTHERN DISTRICT OF CALI-
FORNIA, SOUTHERN DIVISION.

FRANCES INVESTMENT)	In Equity
COMPANY, a corporation,)	Eq. D-61-J
v.)	APPLICATION TO
FRIEND J. AUSTIN, et al,)	AMEND MAR-
Defendants.)	SHAL'S RETURN
	NUNC PRO TUNC.

Comes now the plaintiff by William Story, Jr., Esq., and Joseph L. Lewinson, Esq., its attorneys, and files the affidavit of W. S. Walton, which is filed herewith, in support of the return of the United States Marshal, dated May 11, 1921, upon the subpoena ad respondendum issued in said cause, and directed to the defendant Jasper Thomason and another or others, and the amended return upon said subpoena, dated October 4, 1923, both on file herein; and plaintiff moves the court for an order nunc pro tunc as of October 4, 1923, permitting the filing of said amended return; and plaintiff further moves the court for leave to amend the amended return upon said subpoena as of October 4, 1923, by striking out from said amended return the following: "Miss Thomason, an adult person who is a member or resident of the family of Jasper Thomason", and in lieu thereof substituting the following: "Jane Doe, whose true name is to the undersigned unknown, and who is, and on said 13th day of May, 1921, was, an adult person and a member of the family and resident in the family of said Jasper Thomason," and by striking out the word "or" after the words "the dwelling house", and in lieu thereof inserting the word "and".

In support of said motion, plaintiff shows unto the court the following:

1. Said amended return was by inadvertence and mistake filed without first procuring a formal order permitting the filing of the same.

2. That said amended return, if amended as aforesaid, will speak the true facts relative to the service of said subpoena ad respondendum upon said defendant Jasper Thomason.

3. That said order prayed for is in the interest of justice.

In support of said motion plaintiff refers to the affidavit of W. S. Walton filed herewith, and also herewith affidavit of Joseph L. Lewinson.

In support of said motions, plaintiff further refers to the statement of facts in its opening brief on final hearing on file herein, to the final decree in said cause on file herein, to the supplemental and the amended supplemental bills of complaint on file herein, and to a memorandum of authorities filed herewith.

Dated May 7, 1925.

William Story, Jr.,
Joseph L. Lewinson.
Attorneys for Plaintiff.

UNITED STATES OF AMERICA,)
STATE OF CALIFORNIA,) SS
COUNTY OF LOS ANGELES)

JOSEPH L. LEWINSON, being by me first duly sworn, deposes and says: that he is one of the attorneys for the plaintiff in the above entitled action, and makes this affidavit for and on behalf of said

plaintiff; that he has read the foregoing APPLICATION TO AMEND MARSHAL'S RETURN NUNC PRO TUNC, and knows the contents thereof; and that the same is true of his known knowledge, except as to the matters which are therein stated upon his information or belief, and as to those matters that he believes it to be true.

Joseph L. Lewinson.

Subscribed and sworn to before me this 7th day of May, 1925.

(Seal)

Cora A. Campbell

Notary Public in and for Los Angeles County, California.

[Endorsed]: Original No. Eq D-61-J In The United States District Court SOUTHERN DISTRICT OF CALIFORNIA Southern Division FRANCES INVESTMENT COMPANY Plaintiff vs. FRIEND J. AUSTIN, ET AL Defendant APPLICATION TO AMEND MARSHAL'S RETURN Receipt of a copy of the within is hereby admitted this 7th day of May 1925 Newlin & Ashburn & Wm. T. Kendrick Attorneys for Deft Thomason FILED MAY 7 1925 CHAS. N. WILLIAMS, Clerk By R S Zimmerman Deputy Clerk LEWINSON & BARNHILL 215 West Seventh Street Los Angeles Telephone Metropolitan 0330 Attorneys for Plaintiff.

IN THE DISTRICT COURT OF THE UNITED STATES SOUTHERN DISTRICT OF CALIFORNIA SOUTHERN DIVISION

FRANCES INVESTMENT)	In equity
COMPANY, a corporation,)	Eq. D-61-J
Plaintiff,)	MEMORANDUM
v.)	OF AUTHORITIES
FRIEND J. AUSTIN, et al,)	IN SUPPORT OF
Defendants.)	COURT'S JURIS-
	DICTION AND AP-
	PLICATION FOR
	ORDERS N U N C
	PRO TUNC

The return of the marshal may be supplemented and supported by his affidavit.

Mechanical Appliance Co. v. Castleman, 215 U. S. 437

Fountain v. Detroit etc. Ry Co. 210 Fed. 982 (D. C. Oh)

It is the fact of proper service and not the proof of the fact which gives the court jurisdiction. When, therefore, the facts conferring jurisdiction exist, but the record of them by way of return is defective, great liberality is allowed in permitting amended returns to be filed. Such amendment is allowed only for the purpose of supporting the judgment.

Morrissey v. Gray, 160 Cal. 390, 395

Hibernia Savings Society v. Matthai, 116 Cal. 424, 426.

Allison v. Thomas, 72 Cal. 562, 564.

Nickerson v. Warren, etc. Co. 223 Fed. 843 (D. C. Pa.)

Dougherty v. McDowell, 276 Fed. 728 (D. C. Maine.)

Such amendment will be permitted long after judgment is entered.

Jones v. Gunn, 149 Cal. 687, 692.

Such amendment may be made despite the fact that the officer who made the original return is no longer in office.

Morrissey v. Gray, 160 Cal. 390, 396 (citing numerous cases)

Jones. v. Gunn, 149 Cal. 687, 692.

In such case the old officer or his deputy must make the amendment.

32 Cyc. 539, note 60.

Such amendment may be permitted by the court upon the hearing of a motion to vacate the judgment even though no notice of such proposed amendment has previously been given to the moving party.

Herman v. Santee, 103 Cal. 519.

Dated May 7, 1925.

Respectfully submitted,

Wm Story, Jr.

Joseph L. Lewinson,

Attorneys for Plaintiff.

McComb & Hall

Of Counsel

[Endorsed]: Original No. Eq D-61-J In The United States District Court SOUTHERN DISTRICT OF CALIFORNIA Southern Division FRANCES *INVESMTNE* COMPANY Plaintiff vs. FRIEND J. AUSTIN, ET AL Defendant MEMORANDUM OF AUTHORITIES Receipt of a copy of the within is hereby admitted this 7th day of May 1925 Newlin & Ashburn & Wm. T. Kendrick At-

torneys for Deft. Thomason FILED MAY 7 1925
CHAS. N. WILLIAMS, Clerk By R S Zimmerman
Deputy Clerk LEWINSON & BARNHILL 215 West
Seventh Street Los Angeles Telephone Metropolitan
0330 Attorneys for Plaintiff.

IN THE DISTRICT COURT OF THE UNITED
STATES SOUTHERN DISTRICT OF CALI-
FORNIA SOUTHERN DIVISION.

FRANCES INVESTMENT)
COMPANY, a corporation,) In Equity
Plaintiff,) Eq. D-61-J
v.) AFFIDAVIT OF
FRIEND J. AUSTIN, et al,) JOSEPH L. LEW-
Defendants.) INSON

UNITED STATES OF AMERICA,)
STATE OF CALIFORNIA,) SS.
COUNTY OF LOS ANGELES.)

JOSEPH L. LEWINSON, being first duly sworn,
on oath deposes and says:

My name is Joseph L. Lewinson. I am one of the
attorneys for the plaintiff in the said cause. Up until
last week I believed a formal order had been made
in said cause on or prior to October 4, 1923, permit-
ting the filing of the amended return of the United
States Marshal upon the subpoena ad respondendum in
said cause, directed to Jasper Thomason and another
or others. Due to my inadvertence and mistake, such
order was not so procured.

Joseph L. Lewinson

Subscribed and sworn to before me this 7th day
of May, 1925.

(Seal)

Cora A. Campbell

Notary Public in and for Los Angeles
County, California.

[Endorsed]: Original No. Eq. D-61-J In The United States District Court SOUTHERN DISTRICT OF CALIFORNIA Southern Division FRANCES INVESTMENT COMPANY Plaintiff vs. FRIEND J. AUSTIN, ET AL, Defendant AFFIDAVIT OF JOSEPH L. LEWINSON. Receipt of a copy of the within is hereby admitted this 7th day of May 1925 Newlin & Ashburn & Wm. T. Kendrick Attorneys for Deft Thomason FILED MAY 7 1925 CHAS. N. WILLIAMS, Clerk By R S Zimmerman Deputy Clerk LEWINSON & BARNHILL 215 West Seventh Street Los Angeles Telephone Metropolitan 0330 Attorneys for Plaintiff.

IN THE DISTRICT COURT OF THE UNITED STATES SOUTHERN DISTRICT OF CALIFORNIA SOUTHERN DIVISION.

FRANCES INVESTMENT)	
COMPANY, a corporation,)	In Equity
Plaintiff,)	Eq. D-61-J
v.)	
FRIEND J. AUSTIN, et al,)	AFFIDAVIT OF
Defendants.)	W. S. WALTON
UNITED STATES OF AMERICA,)	
STATE OF CALIFORNIA,)	SS.
COUNTY OF LOS ANGELES.)	

W. S. WALTON, being first duly sworn, on oath deposes and says:

My name is W. S. Walton. From December, 1914, to March, 1922, I was a duly appointed, qualified and acting United States Deputy Marshal for the Southern District of California, except during a portion

of the years 1918 and 1919. During the period mentioned C. T. Walton was the duly appointed, qualified and acting United States Marshal for said district.

In May, 1921, a subpoena ad respondendum directed to Jasper Thomason and Meryle T. Davis was placed in my hands as Deputy United States Marshal, as aforesaid, for service upon said defendants; that prior to being placed in my hands said subpoena had been in the hands of three deputy United States Marshals for service, and the same had not been served; that on May 9, 1921, I proceeded to the residence of said Jasper Thomason in the City of Santa Monica, County of Los Angeles, State of California. I spent about one hour in watching said residence, being seated in an automobile in close proximity to the same. While I was so watching said house, I saw an elderly man go from the yard into the house and return three times. At the time I believed said man was the defendant, Jasper Thomason, and I still believe so. After so watching said place of residence, I rang the front door bell and a woman answered the same. I had substantially the following conversation with said woman:

She came to the door, and I asked her if this was the home of Jasper Thomason, and she said that it was. I asked her if he was home, and she said "No, he is not here. I think he is down in Imperial Valley." I said "Are you his wife?" She said, "No, I am his daughter." I said, "I have some papers to serve on Mr. Thomason, and I think I can serve them on you. You are of age, aren't you?" And she said, "I am twenty-six years old." I said, "What is your name?"

and she said, "I am a married daughter of Mr. Thomason." I said, "All right, I have a right to serve this on any adult member living in the same house. This is Mr. Thomason's home, isn't it?" She said, "Yes." She took the papers in her hand, and she said, "Just a minute. Maybe I should not take these. Maybe I am getting some papers served on my father that I should not." I said, "You can suit yourself. I have a right to serve them on any adult member in this house." She dropped them, and I went out and got in my machine.

After making said service, as aforesaid, I made return on May 13, 1921, as follows:

"UNITED STATES MARSHAL'S OFFICE)
SOUTHERN DISTRICT OF CALIFORNIA) SS

I HEREBY CERTIFY, that I have received the within writ on the 9th day of May, 1921, and personally served the same on the 13th day of May, 1921, on Jasper Thomason and by delivery to and leaving with Miss Thomason for Jasper Thomason said defendants named therein, personally, at the County of Los Angeles in said district, a copy thereof.

C. T. WALTON

U. S. MARSHAL

By W. S. WALTON

Deputy

Los Angeles,
May 13, 1921."

Several days prior to October 4, 1923, I was in the office of Al Sittle, then the duly appointed, qualified and acting United States Marshal for the Southern District of California, and Mr. Sittle called my attention to the return in said case, saying that he had been requested by the attorneys for the plaintiff to amend the same, and asked me to meet said attorneys. Said cause was then on trial, and Mr. Sittle took me into the court room and introduced me to Mr. Joseph L. Lewinson, one of the attorneys for the plaintiff. Mr. Lewinson asked me if the subpoena had been served upon an adult person who was a member or resident in the home of said Jasper Thomason, and I stated to him that it had been. He thereupon requested Mr. Sittle, in my presence, to amend the return accordingly. Mr. Sittle replied that he was willing to amend the return, but that as the process had been served prior to his term of office, it would have to be amended in the name of his predecessor. Later, and on October 4, 1923, I returned to the office of the United States Marshal, and prepared an amended return in words and figures following:

“Amended Return

Frances Investment Co.

vs.

Friend J. Austin, et al.

UNITED STATES MARSHAL'S OFFICE)
SOUTHERN DISTRICT OF CALIFORNIA)

I hereby certify and return, that I received the within writ on the 9th day of May, 1921, and personally served the same on the 13th day of

May, 1921, on Jasper Thomason by delivering to and leaving with Miss Thomason, an adult person, who is a member or resident in the family of Jasper Thomason, said defendant named herein, at the County of Los Angeles, in said district, an attested copy thereof, at the dwelling house or usual place of abode of said Jasper Thomason, one of the said defendants herein.

C. T. WALTON

U. S. MARSHAL

By W. S. WALTON

Deputy

Los Angeles, California,
October 4, 1923."

Said amended return was signed by me and handed to Mr. Sittle, who filed the same with the Clerk of said Court.

I know of my own knowledge that the facts stated in said return and said amended return are true, except that by inadvertence I stated the name of the person upon whom the service was made, to be Miss Thomason, when as a matter of fact service was made on one of the married daughters of said Jasper Thomason. At the time the service was made there was a small boy in the room, who, the woman with whom the copy was left, stated was her child. She also stated, referring to the abode, "This is my home."

I could without difficulty identify the person upon whom the service was made.

W. S. Walton

Subscribed and sworn to before me this 6th day of May, 1925.

Cora A Campbell

(Seal.)

Notary Public in and for Los Angeles County, State of California.

[Endorsed]: Original No. D-61-J In The United States District Court SOUTHERN DISTRICT OF CALIFORNIA Southern Division FRANCES INVESTMENT COMPANY Plaintiff vs. FRIEND J. AUSTIN, ET AL, Defendant AFFIDAVIT OF W. S. WALTON Receipt of a copy of the within is hereby admitted this 7th day of May 1925 Newlin & Ashburn & Wm. T. Kendrick Attorneys for deft Thomason FILED MAY 7, 1925 CHAS N WILLIAMS Clerk By R S Zimmerman Deputy Clerk LEWINSON & BARNHILL 215 West Seventh Street Los Angeles Telephone Metropolitan 0330 Attorneys for Plaintiff.

IN THE DISTRICT COURT OF THE UNITED STATES, SOUTHERN DISTRICT OF CALIFORNIA, SOUTHERN DIVISION.

FRANCES INVESTMENT)	IN EQUITY
COMPANY, a corporation,)	Eq. D-61-J
)	MEMORANDUM
Plaintiff,)	IN OPPOSITION
)	TO APPLICATION
vs)	TO AMEND MAR-
)	SHAL'S
)	RETURN
FRIEND J. AUSTIN, et. al.,)	
)	
Defendants.)	

The application which is now made on behalf of plaintiff for an amended nunc pro tunc of the marshal's return of service upon the defendant Jasper Thomason contemplates the filing of a document which essentially falsifies the amended return upon which the order pro confesso was entered and the Final De-

creed rendered. The amendment does not consist merely of a correction of matters of form or of a supplementing of an otherwise imperfect statement. The proposition is to so amend the return upon which the decree was based as to show that the copy of subpoena was delivered to an entirely different person than the one named in the return, the amended return and the affidavit of W. S. Walton filed herein October 12, 1923.

That this application is one which is addressed to the sound judicial discretion of the court we take it to be free from question, and that the court will only exercise that discretion upon the making of a meritorious showing in support of the application we take it to be likewise well settled. In other words, the denial of this application would not be error on the part of the court nor will the court, without a showing of the verity of the proposed amendment, permit its filing.

In Alderson on Judicial Writs and Process, Section 192, at page 568, the author says:

“The matter of granting permission to an officer to amend his return is within the discretion of the court. It is not granted as of course, but is in the exercise of a sound discretion on the part of the court.”

And at page 566 the same author says:

“The court should be fully satisfied that the application to amend is made in good faith, and that the proposed amendment is warranted by the facts. It is ever the practice of the law, in the course of its application, to ascertain and enforce the truth in its judgments and proceedings; and

to this end its courts, in their nature, have ample power, which they will exercise as far as they can, consistent with rules of just procedure and rights of parties.”

The cases cited by plaintiff in support of its application do not indicate that the matter is not one resting within the judicial discretion of the court. Treating the matter from the standpoint of power of the court, the authority of those cases must be conceded; but from the standpoint of the propriety of exercise of discretion in a given instance, they are by no means controlling or even pertinent for the reason that in each of those cases the amendment was made in aid of the original return or by way of supplement thereto, while in this case the proposed amendment is an attempt to contradict and falsify the original return and substitute a new and different set of facts as a basis for the default. We apprehend that no authority can be found which is to the effect that the marshal can so amend his return as to show that the decree as rendered was rendered upon a false return, and that the present effort is one to falsify instead of supplement the return we shall later endeavor to show.

21 R. C. L., page 1329, Section 77, says:

“Amendments of this description are not granted as a matter of right. The court is bound in every case to exercise a sound discretion, and to allow or disallow an amendment as may best tend to the furtherance of justice.”

-The case of Bayley, Petitioner, 132 Mass. 457, furnishes a fair rule of guidance for the exercise of dis-

cretion in such matters. In this case the officer's return showed service of a writ by leaving same at the place of abode of the defendant and he later sought to amend by inserting a statement to the effect that he had exercised reasonable diligence and been unable to make personal service. The court in denying the application, said in part:

"Two questions are presented by these exceptions: First, Is it within the discretion of a court of record to allow an amendment to the return of a levy of an execution issued by it, by inserting a new and material fact, without proof of the truth of the fact? and second, Was there any evidence of the truth of the proposed amendment offered in the court below, upon which the court, in the exercise of a judicial discretion, could have allowed it?

Upon the first question, we have no doubt. The allowance of amendments to its records is within the discretion of every court of record; but it is a judicial discretion, to be exercised under the rules of law; and a court has no authority to alter its records except to amend them so that they shall conform to the truth. It must appear that a proposed alteration is an amendment before the court can have any discretion to authorize it.

* * *

The second question is, whether there was any evidence of the truth of the proposed amendment, upon which the court, in the exercise of its discretion, could allow it. The ruling was, that there was nothing upon which the court could exercise

its discretion; and we think it was correct. The evidence offered of the truth of the amendment, in the first instance, was the affidavit of the petitioner; and, upon that, the amendment was allowed, without notice to any party in interest. Subsequently, the debtor applied to the court to have the order allowing the amendment annulled, and, upon a hearing, was allowed to call the petitioner, the officer who sought leave to amend his return, as a witness.

The affidavit of the petitioner must be taken in connection with his testimony at the hearing; and the question is, whether, upon his testimony alone, without considering the other evidence put in by the debtor, there was sufficient to justify the court, in the exercise of its discretion, in finding that the amendment was true.

The testimony of the petitioner shows that he did not use reasonable diligence to serve the notice. Upon hearing, at the residence of the debtor, that he was probably not in, the officer made no further inquiry or search, and no attempt to make any legal service of the notice. Upon these facts, he could not truly return that the debtor was not found within his precinct, because he had made no sufficient attempt to find him. As there was no evidence upon which the court could find that the proposed amendment conformed to the truth, it had no discretion to allow it."

In *Wolcott vs Ely*, 2 Allen, page 338, the court held in effect that leave would not be granted to cure formal defects in the return where the evidence showed the substantial fact involved to be falsely stated therein. In this case a person had been appointed as appraiser who was disqualified, but the officer's return showed him to be a qualified and disinterested person. Later it sought to amend the return by curing certain formal defects. The court said:

“There is another ground which is decisive against the levy. It is undoubtedly defective, because the return does not show that due notice was given to the debtor to choose an appraiser. This is a formal defect only; and the parties have agreed, that if it was competent for the court below to allow an amendment to the return, according to the fact, such an amendment shall be taken to have been made. But we do not think it within the proper limits of judicial discretion to allow an officer to amend a formal defect in his return, when facts are untruly stated in other parts of the return; and when, if the whole return were amended to conform to the truth, the amendment would be ineffectual and useless. If any amendment is allowed, it must show the whole truth.”

Hovey vs Wait, 17 Pick. 196, 199:

“On the whole, we are very doubtful whether in fact there is any mistake in the return, as it appears upon the writ. There is no original minute of the officer, made at the time, to amend by. The amendment, if permitted, must be allowed upon doubtful inferences from questionable facts.

But the party moving for the amendment should make out the mistake beyond any reasonable doubt. It is the opinion of the whole Court, that the officer should not be permitted to amend his return, and that the judgment should be for the demandant."

The vicious nature of the present application can be best appreciated by a chronological review of the proceeding so far as the defendant Thomason is concerned.

June 10, 1921: The original alias subpoena upon "Amended Supplemental Bill of Complaint" was filed herein purporting to show service upon defendant Thomason on May 13, 1921, "by delivering to and leaving with Miss Thomason for Jasper Thomason." The deputy apparently thought that he had delivered the subpoena to Meryle Thomason Davis, for his original statement was that he had served "on Jasper Thomason and Meryle Thomason Davis", and then the words "and Meryle Thomason Davis" were stricken out before the document was filed. Attention is called to the affidavit of Rosamond Mildred Hunt, verified May 12, 1925, submitted contemporaneously herewith, which affidavit sets forth a conversation entirely at variance with the affidavit of Walton upon which plaintiff seeks to amend his return but does, on the other hand, show pretty clearly the reason that Mr. Walton, in making his original return, crossed out the name Meryle Thomason Davis and inserted the statement that the service had been made upon "Miss Thomason." He indubitably at that time concluded that the statements as made to him by Rosamond were true and he made his original return accordingly.

October 4, 1923: Mrs. Meryle Thomason Davis was examined in open court by counsel for plaintiff (see Mrs. Davis' affidavit of April 30, 1925, herein), which examination was professedly made for the purpose of establishing the facts upon which the marshal could predicate an amended return. At that examination it fairly appeared that the only daughter who was a member of defendant's family was the youngest daughter Rosamond. Counsel at that time expressly stated to the court that the purpose of the examination was to serve as a basis for the amended return; that the deputy who had made the service was out of the district and was in Seattle and, therefore, not available. On that same day, however, between the morning and afternoon session of court, there was apparently signed and filed the amended return made by the deputy marshal (who had retired from office prior to that date). The examination conducted in open court had drawn the distinction between the married and unmarried daughters, had failed to disclose that any one of them except Rosamond was a member of the defendant's household at the time of service, and the return which was filed on that day still adheres to the statement that service was made on Miss Thomason. If credence be given to the affidavit of Walton, filed herein on May 7, 1925, it appears that the conversation between him and the attorney for plaintiff was of such a casual nature that he made the return as carelessly as he makes his present affidavit (in which he swears to know of his own knowledge facts which the affidavit obviously shows are hearsay gained from another). It seems

fairly apparent that counsel and the marshal at that time relied heavily upon the proposition of law which Mr. Lewinson that day stated,—“Well, it doesn’t make any difference. It can’t impeach the marshal’s return anyway,” and that they relied upon that proposition until our brief was filed herein showing by an overwhelming weight of authorities that the return can be falsified. Until that proposition of law was established in this case counsel and the marshal cared little or nothing whether the return was true or false, because they thought all that was necessary was to make a return which was *prima facie* sufficient and that the matter was for all time concluded against any attack. They were advised by the testimony of Mrs. Davis given on the afternoon of October 4th that the service had been made upon her sister Rosamond and that Rosamond was a minor at the time, (See Davis affidavit of April 30, 1925.) so they went ahead with the return showing service upon the party who actually received the writ and relying upon the proposition that the marshal’s statement of her age could not be at any time contradicted.

How counsel procured and filed on that day the amended return of the deputy marshal who was then in Seattle, it is difficult to fathom. But such appears to have been the case.

October 5, 1923: W. S. Walton, presumably at the instance of the attorneys for the plaintiff, undertook to supplement his amended return by his affidavit bearing that date, which was filed herein on October 12, 1923. In this affidavit he swears that he left the paper with Miss Thomason. He also swears that she was an

adult person at that time. His oath at that time was as good as his oath now. He had been advised presumably that Miss Thomason was a minor at the time of service but, nevertheless, it did not occur to him at that time to swear that he had served the paper upon a married daughter but he selected the less troublesome alternative of swearing that Miss Thomason was at the time of service an adult person. The careful consideration which Mr. Walton gives to his affidavits before making the same is illustrated by the fact that in his most recent affidavit he says that the service was made on May 9, 1921, (see page 1, line 32, of Walton affidavit filed herein May 7, 1925). This must be a mistake. But it is illustrative of the inaccuracy and recklessness of the affiant in signing affidavits and of counsel in procuring the same. It throws considerable light upon the question of whether this affidavit of Waltons should be taken at par or whether, on the contrary, the affidavits of the various members of the Thomason family which are submitted herewith should be taken as true.

In the same connection it should be observed that the latest Walton affidavit first purports to set forth what occurred between him and the person to whom he attempted to hand the paper. It is obvious from his proposed amendment to his return that he does not know to whom he delivered or attempted to deliver the document, for his proposal is to insert the words "Jane Doe whose true name is to the undersigned unknown." This is merely a confession that he is relying upon the conversation which he claims to have had

with the person who talked with him at the Thomason home, and, predicating his statement upon the allegation that that person told him she was a married daughter he seeks to uphold the judgment upon a statement of service upon a person whom he does not purport to identify, but he says by way of conclusion: "I know of my own knowledge that the facts stated in said return and said amended return are true except that by inadvertence I stated the name of the person upon whom the service was made to be Miss Thomason when as a matter of fact service was made on one of the married daughters of said Jasper Thomason." We challenge this statement as being a manifest conclusion drawn by the affiant from hearsay evidence. We further challenge it as being deliberately false because the record shows that he advisedly corrected his return to show service on Miss Thomason and then went so far as to make an affidavit to that effect, which affidavit was made after the proceedings had in open court to which we have already referred.

Not only does Mr. Walton now seek to falsify all that he did before our brief was filed herein, but he seeks to falsify what he has heretofore told counsel for plaintiff, if we are to accept the affidavits of Mr. Lewinson as true. Mr. Lewinson in his affidavit of April 25, 1925, says that the said deputy "who signed said return and said amended return advises affiant that he served said subpoena as in said amended return set forth". (See page 2, line 20.) Mr. Lewinson reiterates this statement at page 2, line 25, of his affidavit of April 29, 1925, where he says "that said Deputy

United States Marshal who signed said return and said amended return advises affiant that he served said subpoena as in said amended return set forth". This would mean but one thing,—that service was made upon Miss Thomason.

Certainly counsel, at the time that the Walton affidavit of October 5, 1923, was filed and at the time he made his own affidavits last referred to, was fully advised of the proceedings had in open court and of the fact that the service had been made on Rosamond Thomason and that she was a minor. Notwithstanding these facts, counsel at all times relied upon the proposition that the marshal could swear to what he pleased and that no one could be heard to contradict him. Never until after our brief was filed upon this motion to vacate judgment did counsel, in affidavit, brief or elsewhere, claim or so much as intimate that service had ever been made upon any person other than Rosamond Thomason.

The affidavits which we filed and served in support of the said motion showed clearly that the service, if any there was, had been made upon Rosamond Thomason and that she was a minor. Counsel were content to rest upon this statement which conformed in part to the return of the marshal because they argued as best they could and apparently believed that the return could not be disputed. Only after the contrary proposition was clearly established did they ever seek to shift their ground and find some other basis upon which to uphold the judgment.

Having decided to shift their base, they go into the bushes and shoot at us from ambush; that is to

say, they decline now to commit themselves as to the person or persons upon whom service was made but say generally that it was a married daughter whose name is unknown, and thereby seek to impose upon us the burden of proving that the service was not made upon any one of the married daughters of defendant Thomason.

This burden has been fully met, however, by the affidavits which we are filing herewith. In the first place, the affidavit of Rosamond Thomason Hunt made on April 26, 1925, shows briefly the things which occurred when the marshal was present at the house. The marshal does not purport to contradict any portion of that affidavit but merely offers a new and different story. The affidavits filed herewith show specifically that the conversation which was had by the marshal was different from what he swears to and that it was had with Rosamond; that at that time the mother was in the Antelope Valley and Jasper Thomason was with her; that they were visiting their daughter, Gladys Shupp; that Mrs. Shupp was likewise at her said residence in the Antelope Valley; that another daughter, Mrs. Stark, resided in San Pedro and was not at the home of Jasper Thomason on the day of attempted service and had no conversation with the deputy; that Meryle Thomason Davis was a married woman not a member of defendant's family, and not residing in his household; that she was at that time on a visit to her father's home but at the time of the attempted service she had gone down town and had left her two year old child with her sister Rosamond; that the child was with Rosamond at the time that the deputy was pres-

ent. This apparently accounts for the confusion of the deputy (if confusion there be) as to the identity of the person upon whom he made his service. The affidavits of all of the daughters and of the wife of Jasper Thomason are presented herewith, together with the affidavit of Emma Harris, who is an aunt of Rosamond and who knows that it was she who talked to the deputy on the occasion in question. The affidavits further show, without equivocation, that the only one of the daughters of Thomason who resided in his family or constituted a member of it at the time in question was the daughter Rosamond; that she was a minor and that it was she and no other person to whom the deputy talked on the occasion in question.

In view of the elaborate and specific showing which we have made in connection with this attempted service, contrasted as it must be in the court's mind with the evasive and uncertain position occupied by the plaintiff from time to time, the fact should be determined by the court in accordance with our showing, namely, that the service was attempted to be made upon Rosamond; that she was a minor and that, therefore, the attempted service was void.

This question of the truth of the proposed amendment and of the affidavit of Walton should be determined by the court before the motion for leave to amend is acted upon, for the reasons indicated in the quotations from the above cited authorities. There is this further reason, namely, that the amended return, when and if filed by leave of court, will constitute a *prima facie* official record of the truth of the facts therein stated and will of its own force and effect cast

upon the defendant Thomason the burden of proving the falsity thereof. We have already shown conclusively the falsity of the amended return now on file and it is incumbent upon the plaintiff and the marshal who now seek to make a further amendment, to convince the court that that amendment in its material aspects is true and correct. The burden at this time rests upon the plaintiff and the marshal and that burden we respectfully submit has not been sustained. The court should not under the above cited authorities, permit of such amendment unless he is satisfied of the truth of the facts contained in the proposed amendment.

The language of the court in *Boyd vs Dean*, 8 Sask. L. 1, is, we think, quite pertinent to this situation:

“The plaintiff under Rule 23 (9) obtained an order giving leave to issue a writ of summons for service *ex juris*. The order was obtained upon affidavit alleging assets consisting of money on deposit in the Merchants Bank of Canada at Regina. The defendant moved before the Master in Chambers to set aside the proceedings on the ground that the money was held by the bank in escrow. In answer to the motion the plaintiff filed a further affidavit alleging that the defendant was the purchaser under agreement for sale of certain lands within the jurisdiction, and that the defendant had an equitable interest therein of value of \$200.00 at least. The Master having dismissed the application, the defendant appealed to a Judge in Chambers.”

In allowing the appeal the court said:

“The affidavit upon which the order was granted stated that the plaintiff was advised and believed that the defendant had on deposit \$4,300.00 in the Merchants Bank of Canada at Regina. As this application came under section 9 of Rule 23, this was the only ground that gave the court jurisdiction. Upon this affidavit the Master ordered the issue of the writ. The defendant moved to set aside the service of the writ upon him on the ground that the above statement was not correct and he swore that the money in question did not belong to him and was held by the bank in escrow, to pay to another party on the performance of certain conditions. This ground of jurisdiction having failed, the plaintiff then set up that defendant had an equitable interest in certain real estate in the province worth more than \$200.00.

That such an interest would be assets under the meaning of that rule I have no doubt, but I am of the opinion that plaintiff having got his order upon one state of facts cannot now, when he finds that they are untrue, set up another state of facts to give the court jurisdiction. He must stand or fall upon the grounds upon which the order was granted.

In *Parker vs Schuller, et al.* 17 T. L. R. 299, the court of appeal so held. Romer, L. J. at page 300, says:

‘Moreover, in my opinion, an application for leave to issue a writ for service out of the jurisdiction ought to be made with great care and

looked at strictly. If a material representation upon which the leave was obtained in the first instance turns out to be unfounded, the plaintiff ought not to be allowed, when an application was made by the defendant to discharge the order for the issue of the writ and the service, to set up another and a distinct cause of action which was not before the Judge upon the original application."

14 California Jurisprudence, Section 116, page 1075:

"The policy of the law is to have every litigated case tried upon its merits; and it looks with disfavor upon a party who, regardless of the merits of his case, attempts to take advantage of the mistake, surprise, inadvertence or neglect of his adversary. The discretion of the court ought always to be exercised in conformity with the spirit of the law and in such manner as will subserve rather than defeat the ends of justice."

We take it that the authorities are fairly uniform to the effect that the court will not permit an amendment of a return of process when such amendment would prove to be nugatory. In this case an examination of the records will show that the only process which was attempted to be served upon the defendant Thomason was the subpoena upon amended supplemental bill of complaint. The decree entered herein awards only a deficiency judgment against the defendant Thomason (see paragraph 8 of the decree), and an examination of the amended supplemental bill of complaint discloses that such relief was in excess

of the prayer of the complaint. That a default judgment cannot exceed the scope of the prayer of the complaint seems to be so well established as to require no citation of authority. See, however,—

Johnson vs Polhemus, 99 Cal. 244;

Webster vs Oliver Ditson Co., 171 Fed. 895;

Southern Pacific R. Co. vs Temple, 59 Fed. 17.

For all of the foregoing reasons we respectfully submit to the court that the application for leave to amend the return should be denied. But if the court should not agree with us on this we then respectfully submit that upon a consideration of all of the affidavits and other papers on file which are pertinent to this motion the court cannot fairly arrive at any other conclusion than the ultimate fact that the attempted service was made with respect to Rosamond Thomason and that she was a minor at the said time and the service, therefore, void.

Respectfully submitted,

Wm T. Kendrick

Newlin & Ashburn

Solicitors for defendant Jasper Thomason appearing specially herein.

[Endorsed]: IN EQUITY No. Eq. D-61-J In The United States District Court, in and for the SOUTHERN DISTRICT OF CALIFORNIA, Southern Division FRANCES INVESTMENT COMPANY, a corporation, Plaintiff vs. FRIEND J. AUSTIN, et al. Defendants MEMORANDUM IN OPPOSITION TO APPLICATION TO AMEND MARSHAL'S RETURN Received copy of the within memorandum

this 13th day of May 1925 Lewinson & Barnhill Attorneys for Plaintiff Filed August 5 1925 Chas N Williams Clerk R S Zimmerman Deputy NEWLIN & ASHBURN 935 Title Insurance Building Telephone Main 0159 LOS ANGELES, CAL. Solicitors for defendant Jasper Thomason appearing specially herein.

IN THE DISTRICT COURT OF THE UNITED STATES SOUTHERN DISTRICT OF CALIFORNIA, SOUTHERN DIVISION

FRANCES INVESTMENT)	
COMPANY, a corporation,)	In Equity
Plaintiff,)	Eq. D-61-J
-vs-)	AFFIDAVIT OF
FRIEND J. AUSTIN, et al,)	ROSAMOND
Defendants.)	MILDRED HUNT

UNITED STATES OF AMERICA,)	
STATE OF CALIFORNIA,)	SS.
COUNTY OF LOS ANGELES.)	

ROSAMOND MILDRED HUNT, being first duly sworn, deposes and says:

That she is the same person who submitted affidavits herein verified respectively April 7, 1925, and April 26, 1925; and supplementing the said affidavits and replying to the affidavit of W. S. Walton filed herein on or about May 7, 1925, affiant says that her father

Jasper Thomason was not in or about his residence on the 13th day of May, 1921, and was at said time in the Antelope Valley, County of Los Angeles, California; that at the said time there was no person who resided in or constituted a part of the family of the said Jasper Thomason except affiant's mother and affiant.

That on the said last mentioned date affiant's sister, Meryle Thomason Davis, together with her son, Henry Fairfax Davis, Junior, were visiting at her father's home. That prior to the arrival of the Deputy United States Marshal on said day the said Meryle Thomason Davis had left her father's home and had left her child with affiant; that upon the arrival of the said Deputy Marshal, whom affiant believes to be the said W. S. Walton, he stated to affiant that he had a subpoena which he desired to serve upon her father Jasper Thomason and affiant stated to him that the said Jasper Thomason was not at home but was out of town; that the said Deputy Marshal then asked for Meryle Thomason Davis, and affiant told him that she was out of town also; that the said Deputy Marshal thereupon told affiant to take the said papers and hand them to her father upon his return, and affiant then said that if said Marshal had any papers to serve upon her father he could bring them back again and deliver them to him when he was at home, and the said Deputy then stated that he desired to leave the said paper with affiant, and that he could not be running down there all the time. Thereupon affiant said substantially, "Can you serve these papers upon me?" And said Deputy

said that he could serve said papers upon any adult member of Mr. Thomason's family. Then affiant said that she was only seventeen (17) years of age and asked him if he could serve the papers upon a minor, to which the said Deputy replied, "Yes, you are seventeen (17)" and sneered. He then asked affiant her name and she said "Thomason", whereupon he looked at the child of Meryle Thomason Davis who was then and there present and again smiled and asked "Miss or Mrs.", to which affiant replied "Miss Thomason." Said Deputy also asked affiant her first name and affiant's best recollection is that she told him her first name and told him correctly that it was Rosamond; meantime affiant had latched the screen door which stood between her and the said officer, who told her that she had better take the papers because if they blew away she would be in trouble. Affiant told him that she would not take the papers and if he did not want them to blow away he could put them in the mail box, but this he declined to do, saying, "I can't serve a mail box", and then threw the said paper upon the floor of the porch and left the premises.

That affiant's aunt, Emma Harris, at that time lived across the street from affiants' father's residence and affiant immediately after said Deputy had left went to her aunt's house and told her the whole of the said incident. That when affiant's sister, Meryle Thomason Davis, returned to her father's residence the said aunt was present and affiant, in the presence of the said aunt, repeated the said incident to the said Meryle Thomason Davis.

Affiant further says that there was not on the said May 13th, 1921, so far as affiant knows, any elderly man in the said residence of her father nor did any such elderly man go from the yard into the house and return three or any number of times.

Affiant, referring particularly to the said affidavit of Walton filed herein, says that she did not tell him that she thought her father was down in Imperial Valley; that the said Walton did not upon the occasion mentioned in his said affidavit say to affiant, "You are of age, aren't you?" And affiant did not say to him, "I am twenty-six years old," but on the contrary did tell him that she was only seventeen (17) years of age. That affiant did not say to the said Walton, "I am a married daughter of Mr. Thomason."

That it is not true that affiant did take the said papers or any papers in her hand, nor did she say in substance or effect, "Just a minute. Maybe I should not take these. Maybe I am getting some papers served on my father that I should not," nor did she make any portion of said alleged statement.

Affiant further says that it is not true that the said Deputy then said to her, "You can suit yourself. I have a right to serve then on any adult member in this house." Affiant further says that she did not state to the said Walton at said time or place, or at all, that the said small child who was in the room with her was her child, nor did the said Walton, so far as affiant remembers, ask or receive any information as to who was the mother of the said child.

Affiant further says that she had but one conversation or interview with the said W. S. Walton and that there was but one occasion upon which a United States Marshall or his Deputy attempted to make service upon the defendant Jasper Thomason by leaving or attempting to leave a paper with affiant, and that according to affiant's best knowledge and belief the said occasion was May 13th, 1921, and not May 9th, 1921.

Affiant further says that she was not married on or prior to said May 13th, 1921, nor at any time prior to July 19, 1923, and that her age at the time of the said attempted service was exactly as set forth in her affidavit made herein on the 7th day of April, 1925.

Rosamond Mildred Hunt

SUBSCRIBED AND SWORN TO BEFORE ME
THIS 12 day of May, 1925.

CHARLES E. EAGLER

Notary Public in and for the County
of Los Angeles, State of California.

(Seal)

My Commission Expires Oct. 9, 1927.

IN THE DISTRICT COURT OF THE UNITED
STATES SOUTHERN DISTRICT OF CALI-
FORNIA, SOUTHERN DIVISION

FRANCES INVESTMENT)	
COMPANY, a corporation,)	In Equity
Plaintiff,)	Eq. D-61-J
-vs-)	AFFIDAVIT OF
FRIEND J. AUSTIN, et al,)	MERYLE THOM-
Defendants.)	ASON DAVIS.

UNITED STATES OF AMERICA,)	
STATE OF CALIFORNIA,)	SS.
COUNTY OF LOS ANGELES.)	

MERYLE THOMASON DAVIS, being first duly sworn, deposes and says:

That affiant is one of the daughters of the defendant Jasper Thomason and Nellie M. Thomason. that on the 13th day of May, 1921, she was married and her name was Meryle Thomason Davis; that on said date she was not a member of the family of the defendant Jasper Thomason, nor was she residing in his dwelling or usual place of abode, although she was at the said time visiting at his residence.

That affiant has a child whose name is Henry Fairfax Davis, Junior, and whose age on said May 13th, 1921, was Two (2) years; that affiant was not present at the residence of the said Jasper Thomason at the

time of the attempted service of subpoena herein by the Deputy United States Marshal, but that affiant had left her said son at her father's home with her sister Rosamond Mildred Thomason (now Hunt).

That affiant at no time had with said W. S. Walton the conversation, nor any portion of the conversation, which is set forth in his affidavit filed herein on or about May 7th, 1925, and had no such conversation with him in substance or effect. That affiant did not at the time or place mentioned in the said affidavit of the said Walton tell him that Jasper Thomason was not at home or that he was down in the Imperial Valley, nor did the said Walton ask her whether she was Jasper Thomason's wife, nor did she say to him, "No, I am his daughter"; nor did the said Walton say to affiant "I have some papers to serve on Mr. Thomason, and I think I can serve them on you", or anything to that effect. Nor did he ask affiant whether she was of age, nor did she say to said Walton that she was twenty-six (26) years old, nor did he ask affiant what her name was, nor did she say to him that she was a married daughter of Mr. Thomason; nor did said Walton say to affiant that he had a right to serve the said subpoena on any adult member living in the same house, nor did he ask affiant if that was Mr. Thomason's home, nor did affiant tell him that it was; nor did affiant take said nor any papers in her hand or did she say in substance or effect, "Just a minute. Maybe I should not take these. Maybe I am getting some papers served on my father that I should not", nor did she make any part of said statements in substance or

effect; nor did the said Walton say to her, "You can suit yourself. I have a right to serve them on any adult member in this house." Nor did he make any similar statements to affiant, nor did she drop the papers or take any other part in the attempted service of the said subpoena.

That when affiant returned to her father's residence on the said May 13th, 1921, she found her child, Henry Fairfax Davis, Junior, her sister, Rosamond Mildred Thomason, and her aunt, Emma Harris, present at said place. That there was no Deputy Marshal present at that time, and that her said sister Rosamond Mildred Thomason (now Hunt) then and there told affiant about the attempt which had been that day made to serve a subpoena upon her father by endeavoring to hand the same to her, and then and there made to affiant statements with respect to the said incident which were substantially as set forth in the affidavit of Rosamond Mildred Hunt submitted herewith.

Meryle Thomason Davis

SUBSCRIBED AND SWORN TO BEFORE ME
THIS 12TH DAY OF MAY, 1925.

Effe D. Botts

(Seal.)

Notary Public in and for the County of Los Angeles,
State of California.

IN THE DISTRICT COURT OF THE UNITED STATES SOUTHERN DISTRICT OF CALIFORNIA, SOUTHERN DIVISION

FRANCES INVESMENT)	
COMPANY, a corporation,)	In Equity
Plaintiff,)	Eq. D-61-J
-vs-)	AFFIDAVIT OF
FRIEND J. AUSTIN, et al,)	EMMA HARRIS
Defendants.)	

UNITED STATES OF AMERICA)	
STATE OF CALIFORNIA)	SS.
COUNTY OF LOS ANGELES.)	

EMMA HARRIS, being first duly sworn, deposes and says:

That she is the wife of Albert C. Harris, who is the uncle of Rosamond Mildred Hunt, formerly Rosamond Mildred Thomason.

That on and prior to May 13th, 1921, affiant lived almost directly across the street from the residence of Jasper Thomason, defendant herein; that on the said date affiant knows that Jasper Thomason was not home, and that there was no person residing in his home except himself, his wife and his daughter Rosamond, although his daughter Meryle Thomason Davis and her small son were then visiting in his home. That on said day affiant saw a man talking to said Rosamond Mildred Thomason at the front door of Jasper Thomason's house and at the same time saw with the said Rosamond Mildred Hunt the small son of the said

Meryle Thomason Davis. That affiant could not hear the conversation between the said parties, but affiant did know that the said Meryle Thomason Davis was not at Jasper Thomason's residence at that time, and that none of his other daughters except the said Rosamond Mildred Thomason was there at the said time; that affiant saw that the said screen door was not opened during the time that the said Rosamond Mildred Thomason was conversing with the said man. That affiant saw him leave the premises but did not see what he did with the said subpoena. That immediately after the said man left the said premises the said Rosamond Mildred Thomason came over to affiant's residence and told her what had occurred between said Rosamond Mildred Thomason and the said man, with reference to his attempt to serve some papers upon Jasper Thomason, and that the statement then made to affiant by the said Rosamond Mildred Thomason was substantially the statement which is set forth in the affidavit of the said Rosamond Mildred Hunt filed contemporaneously herewith.

That shortly after said Rosamond Mildred Thomason had come to affiant's house and detailed the occurrences relating to the said attempted service, the said Meryle Thomason Davis returned to Jasper Thomason's home and the said Rosamond Mildred Thomason then and there made the same statements to the said Meryle Thomason Davis as she had previously made to affiant and substantially as set forth in

the affidavit of Rosamond Mildred Hunt submitted herewith.

Emma Harris

SUBSCRIBED AND SWORN TO BEFORE ME
this 12 day of May, 1925.

H. S. Cohen

Notary Public in and for the County
of Los Angeles, State of California.

(Seal)

My Commission Expires December 20, 1927.

IN THE DISTRICT COURT OF THE UNITED
STATES SOUTHERN DISTRICT OF CALI-
FORNIA, SOUTHERN DIVISION.

FRANCES INVESMENT)	IN EQUITY.
COMPANY, a corporation,)	Eq. D-61-J.
Plaintiff,)	
-vs-)	AFFIDAVIT OF
FRIEND J. AUSTIN, et al,)	NELLIE M.
Defendants.)	THOMASON.

UNITED STATES OF AMERICA)	
STATE OF CALIFORNIA)	SS.
COUNTY OF LOS ANGELES.)	

NELLIE M. THOMASON, being first duly sworn deposes and says: That she is the Nellie M. Thomason who made an affidavit herein on the 7th day of April, 1925, in support of the Motion to Vacate Judgment, etc.; that she is the wife of the defendant, Jasper Thomason; that prior to May 13, 1921, all of the daughters of the said Jasper Thomason and this affiant had been married, except the daughter, Rosamond Mildred Thomason; that on said date, the names of the three married daughters were Meryle Thomason

Davis, Verna Thomason Stark and Gladys Thomason Schupp. That on said date none of the said married daughters was a member of the family of Jasper Thomason or residing in his family or residing at the home of affiant and said Jasper Thomason, although the said Meryle Thomason Davis was at that time visiting temporarily in the said home; that on said date, affiant was in the Antelope Valley, in the County of Los Angeles, California, where she was visiting her daughter, Mrs. Schupp; said daughter was at the said time in the Antelope Valley where she then resided, and the defendant, Jasper Thomason, was likewise in the said Antelope Valley on the said date. That said Rosamond Thomason (now Hunt) was not married on or prior to May 13, 1921.

That affiant has no personal knowledge of what occurred at the time that the Deputy United States Marshal attempted to serve the subpoena herein, and that affiant herself never at any time had any conversation with W. S. Walton, nor did the whole or any portion of the purported conversation which is set forth in the affidavit of W. S. Walton filed herein, on or about May 7th, 1925, occur between the said Walton and this affiant, or in the presence of affiant. That affiant never saw the said subpoena so attempted to be served, nor did she ever know of its delivery by any person to the defendant, Jasper Thomason, but affiant verily believes that the said subpoena was not delivered to him, nor did it ever come into his possession.

Affiant further says that the physical and mental condition of the said Jasper Thomason at this time

is such that it is impossible to produce his affidavit herein; that the said Jasper Thomason is now under the care of physicians and nurses in a sanitarium.

Nellie M. Thomason

Subscribed and sworn to before me
this 13th day of May, 1925.

A. M. Anderson

(Seal)

Notary Public in and for the County
of Los Angeles, State of California.

IN THE DISTRICT COURT OF THE UNITED
STATES SOUTHERN DISTRICT OF CALI-
FORNIA SOUTHERN DIVISION

- - -

FRANCES INVESMENT)	
COMPANY, a corporation,)	In Equity
Plaintiff,)	Eq. D-61-J
-vs-)	AFFIDAVIT OF
FRIEND J. AUSTIN, et al,)	GLADYS THOMA-
Defendants.)	SON SCHUPP

- - - - -

UNITED STATES OF AMERICA)	
STATE OF CALIFORNIA)	SS.
COUNTY OF LOS ANGELES.)	

GLADYS THOMASON SCHUPP, being first duly sworn, deposes and says:

That affiant is one of the daughters of the defendant Jasper Thomason; that she was married prior to May 13th, 1921, and was on said date residing with her husband in the Antelope Valley, near Lancaster, in the County of Los Angeles, State of California; that on said date affiant was present at her said residence

in the said Antelope Valley, and that throughout the whole of the said day her father Jasper Thomason and her mother Nellie M. Thomason were at her said residence with her. That no attempt was made at said place to serve any subpoena or other paper on defendant Jasper Thomason on said day, and that no conversation such as set forth in the affidavit of W. S. Walton filed herein on or about May 7th, 1925, occurred between the said Walton and this affiant, either on the date mentioned or at the place mentioned, or on any other time or occasion, nor did any part of such conversation occur with affiant. That affiant did not at the time or place mentioned in the said affidavit of the said Walton tell him that Jasper Thomason was not at home or that he was down in the Imperial Valley, nor did the said Walton ask her whether she was Jasper Thomason's wife, nor did she say to him, "No, I am his daughter"; nor did the said Walton say to affiant "I have some papers to serve on Mr. Thomason, and I think I can serve them on you," or anything to that effect. Nor did he ask affiant whether she was of age, nor did she say to said Walton that she was twenty-six (26) years old, nor did he ask affiant what her name was, nor did she say to him that she was a married daughter of Mr. Thomason; nor did said Walton say to affiant that he had a right to serve the said subpoena on any adult member living in the same house, nor did he ask affiant if that was Mr. Thomason's home, nor did affiant tell him that it was; nor did affiant take said nor any papers in her hand nor did she say in

substance or effect, "Just a minute. Maybe I should not take these. Maybe I am getting some papers served on my father that I should not," nor did she make any part of said statements in substance or effect; nor did the said Walton say to her, "You can suit yourself. I have a right to serve them on any adult member in this house." Nor did he make any similar statements to affiant, nor did she drop the papers or take any other part in the attempted service of the said subpoena.

Gladys Thomason Schupp
SUBSCRIBED AND SWORN TO BEFORE ME
this 12th day of May, 1925.

Wm. Dellamore.

Notary Public in and for the County
of Los Angeles, State of California.

(Seal)

IN THE DISTRICT COURT OF THE UNITED
STATES SOUTHERN DISTRICT OF CALI-
FORNIA SOUTHERN DIVISION

- - - - -

FRANCES INVESMENT)	In Equity
COMPANY, a corporation,)	Eq. D-61-J
Plaintiff,)	
-vs-)	AFFIDAVIT OF
FRIEND J. AUSTIN, et al,)	VERNA THOMA-
Defendants.)	SON STARK

- - - - -

UNITED STATES OF AMERICA)	
STATE OF CALIFORNIA)	SS.
COUNTY OF LOS ANGELES.)	

VERNA THOMASON STARK, being first duly sworn, deposes and says:

That she is one of the daughters of the defendant Jasper Thomason and Nellie M. Thomason, his wife; that she is the oldest daughter of said Jasper Thomason and on May 13th, 1921, was only twenty-four (24) years of age.

That affiant was married prior to May 13, 1921, and her name on said date was Verna Thomason Stark; that affiant on said date resided with her husband in San Pedro, California; that so far as she knows she was on that particular date at her said home, and affiant has no personal knowledge of the incidents which took place in connection with the attempted service of subpoena herein. Affiant does know, however, that no paper was handed to her or attempted to be handed to her by W. S. Walton or any Deputy United States Marshal, and that she never had any conversation with the said Walton either in substance or effect as set forth in his affidavit herein which was filed on or about May 7th, 1925.

That affiant did not at the time or place mentioned in the said affidavit of the said Walton tell him that Jasper Thomason was not at home or that he was down in the Imperial Valley, nor did the said Walton ask her whether she was Jasper Thomason's wife, nor did she say to him, "No, I am his daughter," nor did the said Walton say to affiant "I have some papers to serve on Mr. Thomason, and I think I can serve them on you," or anything to that effect. Nor did he ask affiant whether she was of age, nor did she say to said Walton that she was twenty-six (26) years old, nor did he ask affiant what her name was, nor did she say to him that she was a married daughter of

Mr. Thomason; nor did said Walton say to affiant that he had a right to serve the said subpoena on any adult member living in the same house, nor did he ask affiant if that was Mr. Thomason's home, nor did affiant tell him that it was; nor did affiant take said nor any papers in her hand; nor did she say in substance or effect, "Just a minute. Maybe I should not take these. Maybe I am getting some papers served on my father that I should not," nor did she make any part of said statements in substance or effect; nor did the said Walton say to her, "You can suit yourself. I have a right to serve them on any adult member in this house." Nor did he make any similar statements to affiant, nor did she drop the papers or take any other part in the attempted service of the said subpoena.

Verna Thomason tSark

SUBSCRIBED AND SWORN TO BEFORE ME
this 12th day of May, 1925.

Wm. Dellamore

(Seal)

Notary Public in and for the County
of Los Angeles, State of California.

Endorsed: Original IN EQUITY No. Eq. D-61-J In the United States District Court, in and for the SOUTHERN DISTRICT OF CALIFORNIA, Southern Division FRANCES INVESTMENT COMPANY, a corporation, Plaintiff vs. FRIEND J. AUSTIN, et al, Defendants AFFIDAVITS. Received copy of the within affidavit this 13 day of May 1925 Lewinson & Barnhill Attorneys for Plaintiff

Filed Aug 5—1925 Chas. N. Williams, Clerk By R. S. Zimmerman Deputy W. T. KENDRICK NEWLIN & ASHBURN 935 Title Insurance Building Telephone Main 0159 LOS ANGELES, Cal. Solicitors for Defendant Jasper Thomason, appearing specially.

IN THE DISTRICT COURT OF THE UNITED
STATES IN AND FOR THE SOUTHERN
DISTRICT OF CALIFORNIA,
SOUTHERN DIVISION.

FRANCES INVESTMENT COMPANY, a corporation, Plaintiff,	)	D-61 Equity REPLY TO DE- FENDANT THOM- ASON'S AFFI- DAVITS IN BRIEF IN OPPOSITION TO MOTION TO AMEND RETURN NUNC PRO TUNC.
vs.		
FRIEND J. AUSTIN, et al., Defendants.)	

It is respectfully submitted:

1.

That the affidavit of the marshal sufficiently supports the service without the necessity of further order of court and necessitates denying said defendant's motion heretofore made to set aside the return. See *Mechanical Appliance Co. v. Castleman* 215 U. S. 437, and *Fountain v. Detroit etc. Railway Co.* 210 Fed 982 (D. C. Ohio). cited in our memo.

2.

By coming into court opposing plaintiff's motion for leave to amend the return, which motion was not made on notice and was upon an ex parte application

said defendant has waived his special appearance and submitted himself to the jurisdiction of the court. If any relief is granted to him (and he is entitled to no relief) it should be on terms.

3.

Assuming the positions taken by us in opposition to said defendants' motion to quash are unsound (which we deny), the question resolves itself into a conflict between the affidavits of the marshal and the daughters of Jasper Thomason. Judge Bledsoe, after hearing extended evidence, both oral and documentary, found Thomason and his son-in-law, Davis, as well as his daughter Meryle T. Davis, the maker of one of the affidavits, guilty of the gravest frauds, adjudging in the final decree "it is found and adjudged that said defendants H. F. Davis and Jasper Thomason, together with the defendants Friend J. Austin and Lettie M. Austin and Meryle T. Davis, committed all and singular the frauds charged against them in said bill of complaint and said judgment is not made against said Meryle T. Davis because by inadvertence and mistake she was not served with process in said cause". It also appears from the marshal's affidavit that at the said time of service, Jasper Thomason was attempting to evade service. We submit as against evidence coming from such polluted sources the court should unhesitatingly accept the affidavit of the marshal.

4.

If there is the slightest doubt in the court's mind as to the truth of the marshal's affidavit, plaintiff is entitled, as a matter of right, to have Thomason and

his daughters, who have made affidavits in his behalf, put on the stand and subjected to searching cross-examination and also to permit the marshal to identify the person with whom process was left.

5.

Now that Thomason has waived his special appearance, plaintiff is clearly entitled to the defenses of waiver and estoppel.

6.

Counsel's insinuation that Mr. Lewinson knew the facts in the marshal's affidavit prior to the time of making said affidavit is a mere speculation and is untrue. It is of the same cloth as the insinuations in a previous brief that plaintiff's counsel was the author of the amended return and filed the same as his own act. This charge, which is unworthy of defendant's counsel, is fully met in the marshal's affidavit.

Respectfully submitted.

William Story, Jr.

Joseph L. Lewinson

Attorneys for Plaintiff.

[Endorsed]: Original No. D-61 In The United States District Court SOUTHERN DISTRICT OF CALIFORNIA Southern Division Frances Investment Company, a corporation, Plaintiff vs. Friend J. Austin, et al., Defendants REPLY TO DEFENDANT THOMASON'S AFFIDAVITS IN BRIEF etc. Receipt of a copy of the within is hereby admitted this 16th day of May 1925 W. T. Kendrick and Newlin & Ashburn attorney for Defendants Filed Aug 5 1925 Chas. N. Williams, Clerk R S Zimmerman

IN THE DISTRICT COURT OF THE UNITED
STATES SOUTHERN DISTRICT OF CALI-
FORNIA, SOUTHERN DIVISION.

FRANCES INVESTMENT	)	In Equity
COMPANY, a corporation,	)	Eq. D-61-J
Plaintiff,	)	O R D E R REL-
vs.	)	A T I V E T O F I L I N G
FRIEND J. AUSTIN, ET	)	A F F I D A V I T O F W.
AL,	)	S. W A L T O N A N D
Defendants.	)	A M E N D M E N T T O
	)	M A R S H A L ' S R E -
	)	T U R N N U N C P R O
	)	T U N C .

This matter came regularly before the court on plaintiff's application for orders nunc pro tunc, plaintiff appearing by William Story, Jr., Esq., and Joseph L. Lewinson, Esq., its attorneys. The court having considered the matter, and having read the supporting affidavits filed with said application, and being fully advised in the premises,

IT IS ORDERED that the affidavit of W. S. Walton annexed to said application has been properly filed, and shall be deemed to be, and is, a part of the record in said cause.

IT IS FURTHER ORDERED, nunc pro tunc as of October 4, 1923, that leave be, and same is hereby granted, to file the amended return of the United States Marshal dated October 4, 1923, upon the subpoena ad respondendum issued in said cause and directed to the defendant Jasper Thomason and another or others as of said date; and it is further ordered, nunc pro tunc, as of October 4, 1923, that said amended return may be amended as of October 4,

1923, by striking therefrom the following: "Miss Thomason, an adult person who is a member or resident of the family of Jasper Thomason," and in lieu thereof substituting the following: "Jane Doe, whose true name is to the undersigned unknown, and who is, and on said 13th day of May, 1921, was, an adult person and a member of the family and resident in the family of said Jasper Thomason"; and further by striking out the word "or" after the words "the dwelling house" in said amended return, and in lieu thereof substituting the word "and"; and the Clerk is directed to make such amendment by proper notation and interlineation on the face of said return.

Dated May 22, 1925.

Wm P James
District Judge.

[Endorsed]: Original No. Eq. D-61-J In The United States District Court SOUTHERN DISTRICT OF CALIFORNIA Southern Division FRANCES INVESTMENT COMPANY Plaintiff vs. FRIEND J. AUSTIN, ET AL, Defendant ORDER RELATIVE TO FILING AFFIDAVIT OF W. S. WALTON, ETC. FILED JUL 15 1925 CHAS. N. WILLIAMS, Clerk By L. J. Cordes Deputy LEWINSON & BARNHILL 215 West Seventh Street Los Angeles Telephone Metropolitan 0330 Attorneys for PLAINTIFF.

IN THE DISTRICT COURT OF THE UNITED
STATES, SOUTHERN DISTRICT OF CALI-
FORNIA, SOUTHERN DIVISION.

.....

FRANCES INVESTMENT)	
COMPANY, a corporation, :	No. D-61-J.
Plaintiff,)	
vs. :	MEMORANDUM
FRIEND J. AUSTIN, et al.,)	OPINION AND
Defendants. :	ORDER.
_____)	

.....

William Story, Jr. and Joseph L. Lewinson: At-
torneys for Plaintiff.

Newlin & Ashburn; Wm. T. Kendrick: Attorneys
for Defendant Jasper Thomason.

.....

Defendant Jasper Thomason has appeared specially and moved to quash the alleged service of subpoena and to vacate a default decree. The ground of the motion is that personal service of the subpoena was not made and that no service was made upon any of the persons mentioned in Equity Rule 13. This rule provides that in lieu of personal service, service of subpoena may be made by "leaving a copy thereof at the dwelling house or usual place of abode of each defendant, with some adult person who is a member of or resident in the family." The affidavits presented on behalf of said defendant show that the deputy marshal attempted to make service upon a daughter of said defendant, who was at the time seventeen years of age; that the said daughter had appeared at the door of the residence and that a screen door, which stood be-

tween her and the deputy marshal, was latched; that said daughter refused to accept the "papers" and that the deputy marshal left them on the floor of the porch of the premises. The first return made by the marshal of this service recited that he had left the subpoena with "Miss Thomason for Jasper Thomason." An amended return was later prepared and filed, reciting that the deputy marshal, claiming to have made service of the subpoena, had "served the same on the 13th day of May, 1921, on Jasper Thomason by delivering to and leaving with Miss Thomason, an adult person, who is a member or resident in the family of Jasper Thomason, * * * an attested copy thereof at the dwelling house or usual place of abode of said Jasper Thomason." Since this motion was made, an application has been presented to further amend said return by substituting for the words "Miss Thomason, an adult person who is a member or resident in the family of Jasper Thomason", the following: "Jane Doe, whose true name is to the undersigned unknown, and who is, and on said 13th day of May, 1921, was, an adult person and a member of the family and resident in the family of Jasper Thomason." This order will be signed and the supplemental affidavit of the deputy marshal in support of his return will be allowed to be filed.

Considering the application then, with all of the matters mentioned present: The point is first urged by the plaintiff that the return of the marshal cannot be attacked except in a direct action wherein the parties may have a trial upon issues of fraud, if such are framed. That undoubtedly is the rule which should

be enforced where the officer making service of the summons or subpoena definitely and certainly declares that he has made the service upon a party defendant. The rule is just as general that where any other personal service of process is allowed to be made, the mode of service must be most strictly complied with in order that the court shall have jurisdiction, and that this compliance must definitely and affirmatively appear in the return. The original return and the first amended return were definite that the service was made upon a "Miss Thomason", but the final amended return as now presented and filed shows that the officer must have been without any certain knowledge of the name of the person upon whom he made service when he filed his earlier certificate. Under such a condition of the record, I think that the case is a very proper one to allow the defendant, who admittedly never was personally served, to contest the return and show that the service as made was insufficient to give jurisdiction.

The motion to quash the alleged service of subpoena as to defendant Jasper Thomason and to vacate the decree entered against said defendant is granted. An exception is allowed in favor of the plaintiff.

Dated this 25th day of May, 1925.

Wm. P. James
District Judge.

[Endorsed]: No. D-61-J U. S. District Court,
SOUTHERN DISTRICT OF CALIFORNIA,
SOUTHERN DIVISION. FRANCES INVEST-
MENT COMPANY, a corporation, Plaintiff, vs.

FRIEND J. AUSTIN, et al., Defendants. MEMORANDUM OPINION AND ORDER, FILED MAY 25 1925 CHAS. N. WILLIAMS, Clerk Murray E Wire Deputy

IN THE DISTRICT COURT OF THE UNITED STATES, SOUTHERN DISTRICT OF CALIFORNIA, SOUTHERN DIVISION.

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FRANCES INVESTMENT)	IN EQUITY
COMPANY, a corporation,	(
)	D-61-J.
Plaintiff,	(
v.)	
	(
FRIEND J. AUSTIN, LET-)	NOTICE OF
TIE M. AUSTIN, his wife,	(	MOTION TO SET
WILLIAM MARTIN BEL-	)	ASIDE ORDER
FORD, ANNIE MARIE BEL-	)	QUASHING
FORD, his wife, THE PEOP-	)	SERVICE OF
LES ABSTRACT & TITLE	)	SUBPOENA,
COMPANY, a corporation, H.	(	ETC.
F. DAVIS and MERYLE T.)	
DAVIS, his wife, JOHN W.	(
AUSTIN and LAURA A.)	
AUSTIN, his wife, JASPER	(
THOMASON, JESSE BOYD)	
FILCHER, THOMAS EDWIN	(
GILL and MYRA RIT-)	
ZINGER GILL, his wife,	(
HARRY D. ARON, T. P.)	
SANTA, ROBERT B.	(
WALKER, JOHN DOE,)	
RICHARD DOE, JOHN ROE,	(
RICHARD ROE. SARAH)	
DOE, JANE DOE, SARAH	(

ROE, JANE ROE, A-1 COM-)
 PANY, a corporation, B-1 ()
 COMPANY, a corporation, C-1)
 COMPANY, a corporation, ()
 IMPERIAL WATER COM-)
 PANY NO. 1, IMPERIAL ()
 WATER COMPANY NO. 3,)
 IMPERIAL WATER COM- ()
 PANY NO. 5, WADE H.)
 BOYER and LEAH A. ()
 BOYER, his wife,)
)
 Defendants.)
 ()
)

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To Jasper Thomason, one of the defendants in the above entitled cause, and to William T. Kendrick and Newlin and Ashburn, his solicitors and attorneys:

YOU AND EACH OF YOU WILL PLEASE TAKE NOTICE that the plaintiff will appear before the above entitled Court on Monday the 6th day of July, 1925, at the opening of court, or as soon thereafter as counsel can be heard, at the court room of the above entitled court usually occupied by the Honorable William P. James, in the Federal Building, Los Angeles, California, and will then and there make the motion hereto annexed and made a part hereof.

Dated: July 3, 1925.

William Story, Jr
Joseph L. Lewinson

Attorneys and Solicitors for Plaintiff.

Laurence W. Beilenson

· Of Counsel.

IN THE DISTRICT COURT OF THE UNITED STATES, SOUTHERN DISTRICT OF CALIFORNIA, SOUTHERN DIVISION.

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FRANCES INVESTMENT) IN EQUITY
COMPANY, a corporation, (
) D-61-J.
Plaintiff, (
v.)

FRIEND J. AUSTIN, LET-) MOTION TO
TIE M. AUSTIN, his wife, (SET ASIDE
WILLIAM MARTIN BEL-) ORDER QUASH-
FORD, ANNIE MARIE BEL-) ING SERVICE
FORD, his wife, THE PEO- (OF SUBPOENA
PLES ABSTRACT & TITLE) AND SETTING
COMPANY, a corporation, H. (ASIDE JUDG-
F. DAVIS and MERYLE T.) MENT AGAINST
DAVIS, his wife, JOHN W. (DEFENDANT
AUSTIN and LAURA A.) JASPER
AUSTIN, his wife, JASPER (THOMASON.
THOMASON, JESSE BOYD)
FILCHER, THOMAS EDWIN (
GILL and MYRA RIT-)
ZINGER GILL, his wife, (
HARRY D. ARON, T. P.)
SANTA, ROBERT B. (
WALKER, JOHN DOE,)
RICHARD DOE, JOHN ROE, (
RICHARD ROE, SARAH)
DOE, JANE DOE, SARAH (
ROE, JANE ROE, A-1 COM-)
PANY, a corporation, B-1 (
COMPANY, a corporation. C-1)
COMPANY, a corporation, (
IMPERIAL WATER COM-)
PANY NO. 1, IMPERIAL (

WATER COMPANY NO. 3,)
 IMPERIAL WATER COM- ()
 PANY NO. 5, WADE H.)
 BOYER and LEAH A. ()
 BOYER, his wife,)
)
 Defendants.)
)
)

---0-0---

Comes now the plaintiff, by William Story, Jr., Esquire, and Joseph L. Lewinson, Esquire, its attorneys, and moves the Court for an order setting aside that certain order in the above entitled suit dated the 25th day of May, 1925, quashing the alleged service of subpoena as to the defendant, Jasper Thomason, and vacating the decree entered against said defendant, Jasper Thomason, which said order is entitled, Memorandum Opinion and Order.

In support of said motion, plaintiff shows *into* the Court the following grounds on which said motion is made:

1. That said order was erroneously made for all the reasons hereinafter set forth.

2. That defendant, Jasper Thomason, by filing affidavits and a brief in opposition to plaintiff's application and motion to amend the marshal's return nunc pro tunc, which said application and motion was dated May 7, 1925, entered a general appearance and submitted himself to the jurisdiction of the Court and waived all objections to the service or lack of service of said subpoena upon him.

3. That the amended return of the marshal was conclusive upon the defendant, Jasper Thomason.

4. That the copy of the subpoena was left with an adult person.

5. That defendant, Jasper Thomason, was in no position to urge non-compliance with Equity Rule 13.

6. That said order should not have been entered without an opportunity for an oral hearing where opportunity for cross-examination would be afforded.

7. That the attempted special appearance of the defendant, Jasper Thomason, amounted to a general appearance.

This motion will be based upon, and plaintiff refers to in support of this motion, this motion, the notice thereof, the annexed points and authorities, said order dated May 25, 1925, quashing the alleged service of subpoena as to the defendant, Jasper Thomason, and vacating the decree entered against said defendant, the minutes of this Court, the notice of the special appearance of the defendant, Jasper Thomason, and of the motion to quash service of subpoena, etc., dated the 15th day of April, 1925, and the affidavits and points and authorities annexed thereto, and filed in support thereof, the memorandum of points and authorities filed by plaintiff in opposition to the motion to quash service of subpoena, the affidavits of Joseph L. Lewinson opposing the motion to quash, the affidavit of Meryle Thomason Davis verified the 27th day of April, 1925, the affidavit of W. S. Mortenson verified April 26th, 1925, the affidavit of Rosamond Mildred Hunt verified April 26th, 1925, the affidavit of

A. W. Ashburn verified April 27th, 1925, the affidavit of Meryle Thomason Davis verified April 30th, 1925, plaintiff's memorandum of authorities in support of Court's jurisdiction and application for order nunc pro tunc, the application and motion of plaintiff to amend the marshal's return nunc pro tunc, and the affidavit of Joseph L. Lewinson verified the 7th day of May, 1925, in support thereof, the affidavit of W. S. Walton verified the 6th day of May, 1925, the order of this Court relative to filing affidavit of W. S. Walton and amendment to marshal's return nunc pro tunc dated May 7th, 1925, the memorandum of the defendant, Jasper Thomason, in opposition to the application of plaintiff to amend the marshal's return and the affidavit filed by defendant, Jasper Thomason, in opposition to said application to amend said marshal's return, the affidavit of Rosamond Mildred Hunt verified the 12th day of May, 1925, the affidavit of Meryle Thomason Davis verified the 12th day of May, 1925, the affidavit of Emma Harris verified the 12th day of May, 1925, the affidavit of Nellie M. Thomason verified the 13th day of May, 1925, the affidavit of Gladys Thomason Schupp verified the 12th day of May, 1925, the affidavit of Verna Thomason Stark verified the 12th day of May, 1825, the reply of plaintiff to defendant's, Jasper Thomason's, affidavits and brief in opposition to motion to amend return nunc pro tunc, the special appearance entered by and on behalf of Jasper Thomason, the alias subpoena on amended supplemental bill of complaint herein, the returns upon service of said subpoena made herein by W. S. Walton

dated respectively May 13, 1921, October 4, 1923, and October 5, 1923, and said return as amended in accordance with the Court's order allowing said amendment nunc pro tunc hereinbefore referred to, the order pro confesso made and entered herein on the 12th day of October, 1923, the final decree made and entered herein on the 24th day of March, 1925, and upon all of the Clerk's records and the papers and files in the above entitled proceeding which may have any relation to or bearing upon this said motion.

Dated: July 3rd, 1925.

William Story, Jr,

Joseph Lewinson

Attorneys and Solicitors for Plaintiff.

Laurence W Beilenson

Of Counsel

[Endorsed]: ORIGINAL IN EQUITY No. D-61-J In The UNITED STATES DISTRICT COURT Southern District of California Southern Division FRANCES INVESTMENT COMPANY, a corporation, Plaintiff vs. FRIEND J. AUSTIN, et al, Defendants NOTICE OF MOTION TO SET ASIDE ORDER QUASHING SERVICE OF SUBPOENA, ETC Time of service is shortened to 1 day. Dated: July 3, 1925 Wm P James Judge. FILED JUL 3 1925 CHAS. N. WILLIAMS, Clerk By L J Cordes Deputy Clerk Law Offices CHARLES GREENBERG LAURENCE W. BEILENSEN 1231 C. C. Chapman Bldg. Los Angeles, Cal. TUCKER 8211

At a stated term, to-wit: the January, A. D. 1925 term of the District Court of the United States of America, within and for the Southern Division of the Southern District of California, held at the Court room thereof in the city of Los Angeles, on Monday, the sixth day of July in the year of our Lord one thousand nine hundred and twenty-five;

Present:

The Honorable Wm. P. James, District Judge		
Frances Investment Co., a cor-)	
poration,)	
)	
)	
)	
	)	No. D-61-J. Eq.
)	
Plaintiff,)	
)	
vs.)	
)	
)	
FRIEND J. AUSTIN, et al.,)	
)	
Defendants.)	

This cause coming before the Court for hearing on motion to set aside order quashing service of subpoena and vacating decree as to defendant Jasper Thomason, Laurence W. Beilenson, Esq., appearing as counsel for the plaintiff; A. W. Ashburn, Esq. appearing in Court; said Laurence W. Beilenson, Esq. argues in support of motion and A. W. Ashburn, Esq. having argued to the Court in opposition thereto, and having stated that a copy of notice was left at the office of Newlin & Ashburn, and that he is not appearing for defendant Thomason but as amicus curiae and said attorney A. W. Ashburn having submitted authorities, it is by the Court ordered that Attorney Laurence W. Beilenson have two days to file brief of authorities.

IN THE DISTRICT COURT OF THE UNITED STATES, SOUTHERN DISTRICT OF CALIFORNIA, SOUTHERN DIVISION.

FRANCES INVESTMENT	)	D-61-J
COMPANY, a corporation,	(
Plaintiff,)	
)	
vs.	(	AFFIDAVIT OF
	)	SERVICE.
FRIEND J. AUSTIN, et al.,)	
	(
Defendants.)	
	(
)	
STATE OF CALIFORNIA)	
	(	ss.
County of Los Angeles)	

F. C. RHOADES being first duly sworn on his oath deposes and says: That he is over the age of twenty-one years and not a party to or interested in the above entitled cause; that he served the within Notice of Motion and Motion and the Points and Authorities thereto attached on William T. Kendrick, Esquire and Newlin and Ashburn, Esquires, the solicitors and attorneys for the defendant, Jasper Thomason in the above entitled cause by leaving one copy thereof with William T. Kendrick personally at his office in the Van Nuys Building in the City of Los Angeles, County of Los Angeles, State of California, at One o'clock P. M. on Friday July 3, 1925, and by leaving a copy thereof with A. W. Ashburn, Esquire, at the office

of Newlin and Ashburn in the Title Insurance Building in the City of Los Angeles, County of Los Angeles, State of California, on Friday, July 3, 1925, at 1:30 o'clock P. M.

F. C. Rhoades

Subscribed and sworn to before me this 6th day of July, 1925.

(Seal)

Laurence W. Beilenson

Notary Public in and for the County of Los Angeles,
State of CALIFORNIA.

Attached to affidavit are notice of motion and motion, & point & authorities in words and figures same as preceding documents.

[ENDORSED] No. D-61-J. Dept. In the DISTRICT COURT of the United States Southern District of Calif. Southern Division. FRANCES INVESTMENT COMPANY, a corporation, Plaintiff vs. FRIEND J. AUSTIN, et al Defendants AFFIDAVIT OF SERVICE Time for Service Shortened to 1 day Dated: July 3, 1925 William P James Judge Filed Jul 6 1925 CHAS. N. WILLIAMS, Clerk By L J Cordes Deputy Clerk Law offices CHARLES GREENBERG LAURENCE W. BEILENSEN 1231 C. C. Chapman Bldg. Los Angeles Cal. TUCKER 8211 Attorneys for Plaintiff

At a stated term, to wit: The January Term, A. D. 1925 of the District Court of the United States of America, within and for the Southern Division of the Southern District of California, held at the Court Room thereof, in the City of Los Angeles on Thursday

the 9th day of July in the year of Our Lord one thousand nine hundred and twenty-five.

Present:

The Honorable WM. P. JAMES, District Judge.

Frances Investment Company a corporation		Plaintiff,	} No. D-61-J
	vs.		
Friend J. Austin, et al,		Defendants.	

The motion of the plaintiff for an order setting aside the order heretofore made granting the motion of defendant Jasper Thomason to vacate the service of subpoena alleged to have been made upon him and to vacate the default decree, is denied. An exception is entered in favor of the plaintiff.

IN THE DISTRICT COURT OF THE UNITED STATES, SOUTHERN DISTRICT OF CALIFORNIA, SOUTHERN DIVISION.

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FRANCES INVESTMENT)	IN EQUITY
COMPANY, a corporation, (
Plaintiff,)	D-61-J.
v. (
)	
FRIEND J. AUSTIN, LET- (NOTICE OF
TIE M. AUSTIN, his wife,)	PETITION FOR
WILLIAM MARTIN BEL- (	APPEAL
FORD, ANNIE MARIE BEL-)	
FORD, his wife, THE PEO- (
PLES ABSTRACT & TITLE)	
COMPANY, a corporation, H. (
F. DAVIS and MERYLE T.)	

DAVIS, his wife, JOHN W. ()
 AUSTIN and LAURA A.)
 AUSTIN, his wife, JASPER ()
 THOMASON, JESSE BOYD)
 FILCHER, THOMAS EDWIN ()
 GILL and MYRA RITZINGER)
 GILL, his wife, HARRY D. ()
 ARON, T. P. SANTA, ROB-)
 ERT B. WALKER, JOHN ()
 DOE, RICHARD DOE, JOHN)
 ROE, RICHARD ROE, ()
 SARAH DOE, JANE DOE,)
 SARAH ROE, JANE ROE, ()
 A-1 COMPANY, a corporation,)
 B-1 COMPANY, a corporation, ()
 C-1 COMPANY, a corporation,)
 IMPERIAL WATER COM- ()
 PANY NO. 1, IMPERIAL)
 WATER COMPANY NO. 3, ()
 IMPERIAL WATER COM-)
 PANY NO. 5, WADE H.)
 BOYER and LEAH A.)
 A. BOYER, his wife, ()
)
 Defendants. ()
)
(

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To Jasper Thomason, one of the defendants in the above entitled cause, and to William T. Kendrick, Esquire, and Newlin and Ashburn, Esquires, his solicitors:

YOU AND EACH OF YOU WILL PLEASE TAKE NOTICE that the plaintiff will appear before the above entitled court on Monday, the 20th day of July, 1925, at the opening of court, or as soon there-

after as counsel can be heard, at the court room of the above entitled court, usually occupied by Honorable William P. James, in the Federal Building, Los Angeles, California, and will then and there present its petition for appeal and its assignment of errors in the above entitled cause, copies of which are hereto annexed and served on you herewith.

Dated: July 15th, 1925.

William Story Jr

Joseph L. Lewinson

Laurence W. Beilenson

Solicitors for Plaintiff

Of Counsel.

[Endorsed]: ORIGINAL No. D-61-J In Equity Dept..... In the DISTRICT COURT OF THE UNITED STATES Southern District Southern Division FRANCES INVESTMENT COMPANY, a corporation, Plaintiff vs. FRIEND J. AUSTIN, et al., Defendants NOTICE OF PETITION FOR APPEAL Received copy of the within Notice of Petition for appeal this 15th day of July 1925 Wm. T. Kendrick & Newlin & Ashburn Solicitors for Jasper Thomason appearing specially herein for purpose of contesting jurisdiction over person of said Thomason and not appearing generally herein. FILED JUL 15 1925 CHAS. N. WILLIAMS L J Cordes Deputy Law offices CHARLES GREENBERG LAURENCE W. BEILENSEN 1231 C C Chapman Bldg. Los Angeles, Cal TUCKER 8211

IN THE DISTRICT COURT OF THE UNITED
STATES, SOUTHERN DISTRICT OF
CALIFORNIA, SOUTHERN
DIVISION.

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FRANCES INVESTMENT)	IN EQUITY
COMPANY, a corporation, (
Plaintiff,)	D-61-J.
v. (
)	
FRIEND J. AUSTIN, LET- (PETITION FOR
TIE M. AUSTIN, his wife,)	APPEAL.
WILLIAM MARTIN BEL- (
FORD, ANNIE MARIE BEL-)	
FORD, his wife, THE PEO- (
PLS ABSTRACT & TITLE)	
COMPANY, a corporation, H. (
F. DAVIS and MERYLE T.)	
DAVIS, his wife, JOHN W. (
AUSTIN and LAURA A.)	
AUSTIN, his wife, JASPER (
THOMASON, JESSE BOYD)	
FILCHER, THOMAS EDWIN (
GILL and MYRA RITZINGER)	
GILL, his wife, HARRY D. (
ARON, T. P. SANTA, ROB-)	
ERT B. WALKER, JOHN (
DOE, RICHARD DOE, JOHN)	
ROE, RICHARD ROE, (
SARAH DOE, JANE DOE,)	
SARAH ROE, JANE ROE, (
A-1 COMPANY, a corporation,)	
B-1 COMPANY, a corporation, (
C-1 COMPANY, a corporation,)	
IMPERIAL WATER COM- (
PANY NO. 1, IMPERIAL)	
WATER COMPANY NO. 3, (
IMPERIAL WATER COM-)	

PANY NO. 5, WADE H. (
 BOYER and LEAH A.)
 A. BOYER, his wife, (
)
 Defendants. (
)
(

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The above named plaintiff, FRANCES INVESTMENT COMPANY, a corporation, feeling it is aggrieved by the order entered in the above entitled cause on the 25th day of May, 1925, quashing the service on defendant Jasper Thomason and setting aside the decree as to the defendant Jasper Thomason, and by the order entered in the above entitled cause on the 9th day of July, 1925, denying plaintiff's motion to set aside said order of May 25th, 1925, does hereby appeal from said orders to the Circuit Court of Appeals for the Ninth Circuit, for the reasons specified in the assignment of errors, which is filed herewith, and it prays that its appeal may be allowed and that citation issue as provided by law, and that a transcript of the record and proceedings and papers upon which said orders were based may be sent to the Circuit Court of Appeals for the Ninth Circuit sitting at San Francisco, California.

And your petitioner further prays that the proper order touching the security to be required of it to perfect its appeal be made.

Dated July 20, 1925.

William Story, Jr.
 Joseph L. Lewinson
 Solicitors for Plaintiff.

Laurence W. Beilenson
 Of Counsel.

The petition granted and the appeal allowed upon giving bond conditioned as required by law in the sum of Three hundred Dollars.

Dated: July 20, 1925

Wm P James
Judge.

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[ENDORSED] In Equity No. D-61-J. Dept.....
In The DISTRICT COURT OF THE UNITED STATES Southern District Southern Division
FRANCES INVESTMENT COMPANY, a corporation, Plaintiff vs. FRIEND J. AUSTIN et al., Defendants
PETITION FOR APPEAL FILED JUL 20 1925 CHAS. N. WILLIAMS, Clerk By R S Zimmerman Deputy Clerk Law offices CHARLES GREENBERG LAURENCE W. BEILENSON 1231 C. C. Chapman Bldg. Los Angeles, Cal. TUCKER 8211

IN THE DISTRICT COURT OF THE UNITED STATES, SOUTHERN DISTRICT OF CALIFORNIA, SOUTHERN DIVISION.

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FRANCES INVESTMENT)	IN EQUITY
COMPANY, a corporation, (
Plaintiff,)	D-61-J.
v. (
)	
FRIEND J. AUSTIN, LET- (ASSIGNMENT
TIE M. AUSTIN, his wife,)	OF ERRORS.
WILLIAM MARTIN BEL- (
FORD, ANNIE MARIE BEL-)	
FORD, his wife, THE PEO- (

PLES ABSTRACT & TITLE)
 COMPANY, a corporation, H. ()
 F. DAVIS and MERYLE T.)
 DAVIS, his wife, JOHN W. ()
 AUSTIN and LAURA A.)
 AUSTIN, his wife, JASPER ()
 THOMASON, JESSE BOYD)
 FILCHER, THOMAS EDWIN ()
 GILL and MYRA RITZINGER)
 GILL, his wife, HARRY D. ()
 ARON, T. P. SANTA, ROB-)
 ERT B. WALKER, JOHN ()
 DOE, RICHARD DOE, JOHN)
 ROE, RICHARD ROE, ()
 SARAH DOE, JANE DOE,)
 SARAH ROE, JANE ROE, ()
 A-1 COMPANY, a corporation,)
 B-1 COMPANY, a corporation, ()
 C-1 COMPANY, a corporation,)
 IMPERIAL WATER COM- ()
 PANY NO. 1, IMPERIAL)
 WATER COMPANY NO. 3, ()
 IMPERIAL WATER COM-)
 PANY NO. 5, WADE H. ()
 BOYER and LEAH A.)
 BOYER, his wife, ()
)
 Defendants. ()
)
()

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And now, on this the 15th day of July, 1925, comes the plaintiff by his solicitors, William Story, Jr., and Joseph L. Lewinson, and says that the order entered in the above cause on the 25th day of May, 1925, quashing the alleged service of subpoena as to defendant Jasper Thomason and vacating the decree entered against said defendant Jasper Thomason, and

the order entered in the above entitled cause on the 9th day of July, 1925, denying plaintiff's motion to set aside said order of May 25th, 1925, are erroneous and unjust to plaintiff.

1. Because the amended return of the marshal showed good and valid service on defendant Jasper Thomason.

2. Because the amended return of the marshal showed good and valid service on defendant Jasper Thomason and such return was conclusive.

3. Because the amended return of the marshal complied in all respects with Equity Rule 13 and such return, being complete and self-supporting, was conclusive.

4. Because even if the court believed that the person served was Rosamond Mildred Thomason (now Rosamond Mildred Hunt) it still appears that there was a compliance with Equity Rule 13.

5. Because it appears that Rosamond Mildred Thomason (now Rosamond Mildred Hunt) at the time the copy of the subpoena ad respondendum was left with her was an adult within the meaning of Equity Rule 13.

6. Because Equity Rule 13 must be given a reasonable construction, and if it appears that a copy of the subpoena was left with a person who understood its contents and was likely to deliver it to the person for whom it was intended, there is a compliance, and such appeared to be the facts here.

7. Because it appeared that defendant Jasper Thomason actually received the copy of the subpoena from his daughter.

8. Because it did not appear that defendant Jasper Thomason did not actually receive the copy of the subpoena from his daughter.

9. Because the defendant Jasper Thomason could not move to quash the service on him without showing that he had no knowledge of the suit until shortly before his motion to quash.

10. Because the court refused to allow oral hearing on defendant Jasper Thomason's motion to quash.

11. Because plaintiff was denied an opportunity to cross-examine the persons who made affidavits in support of defendant Jasper Thomason's motion to quash.

12. Because, in view of the deputy marshal's affidavit filed in support of the motion to amend the return, the court should have found the facts in accordance with his amended return.

13. Because, by filing a memorandum and affidavits in opposition to plaintiff's motion and application to amend the marshal's return before his motion to quash was decided, defendant Jasper Thomason made a general appearance and thereby submitted his person to the jurisdiction of the court and made the judgment against him good and valid.

14. Because, by appealing to the court's discretion in opposition to plaintiff's application to amend the marshal's return before his motion to quash was decided, defendant Jasper Thomason made a general appearance and thereby submitted his person to the jurisdiction of the court and made the judgment against him good and valid.

15. Because, by the making of an argument on the merits in opposition to plaintiff's application to amend the marshal's return before his motion to quash was decided, defendant Jasper Thomason made a general appearance and thereby submitted his person to the jurisdiction of the court and made the judgment against him good and valid.

16. Because, by making an argument based on the fact that the decree was in excess of the prayer of the amended supplemental bill of complaint in opposition to plaintiff's application to amend the marshal's return before his motion to quash was decided, defendant Jasper Thomason made a general appearance and thereby submitted his person to the jurisdiction of the court and made the judgment against him good and valid.

17. Because the court should have given no credence to the affidavits of the members of the family of defendant Jasper Thomason in view of the findings of fraud on their part in the decree.

WHEREFORE plaintiff prays that said orders be reversed and the District Court be directed to restore the decree against defendant Jasper Thomason.

William Story, Jr.

Joseph L. Lewinson

Laurence W. Beilenson

Solicitors for Plaintiff.

Of Counsel.

[Endorsed]: In Equity No. D-61-J In The DISTRICT COURT OF THE UNITED STATES Southern District of California Southern Division FRANCES INVESTMENT COMPANY a corpora-

tion, Plaintiff vs. FRIEND J. AUSTIN, et al. Defendants ASSIGNMENT OF ERRORS. Filed Jul 20 1925 CHAS. N. WILLIAMS, Clerk By R S Zimmerman Deputy Clerk Law offices CHARLES GREENBERG LAURENCE W. BEILENSON 1231 C. C. Chapman Bldg. Los Angeles, Cal. TUcker 8211

IN THE DISTRICT COURT OF THE UNITED STATES, SOUTHERN DISTRICT OF CALIFORNIA, SOUTHERN DIVISION.

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FRANCES INVESTMENT) IN EQUITY.
COMPANY, a corporation, ()
Plaintiff,) D-61-J.

v. ()

FRIEND J. AUSTIN, LET- ()
TIE M. AUSTIN, his wife,)
WILLIAM MARTIN BEL- ()
FORD, ANNIE MARIE BEL- ()
FORD, his wife, THE PEO- ()
PLES ABSTRACT & TITLE)
COMPANY, a corporation, H. ()
F. DAVIS and MERYLE T.)
DAVIS, his wife, JOHN W. ()
AUSTIN and LAURA A.)
AUSTIN, his wife, JASPER ()
THOMASON, JESSE BOYD)
FILCHER, THOMAS EDWIN ()
GILL and MYRA RITZINGER)
GILL, his wife, HARRY D. ()
ARON, T. P. SANTA, ROB-)
ERT B. WALKER, JOHN ()
DOE, RICHARD DOE, JOHN)
ROE, RICHARD ROE, ()
SARAH DOE, JANE DOE,)

SARAH ROE, JANE ROE, (

A-1 COMPANY, a corporation,)

B-1 COMPANY, a corporation, (

C-1 COMPANY, a corporation,)

IMPERIAL WATER COM- (

PANY NO. 1, IMPERIAL)

WATER COMPANY NO. 3, (

IMPERIAL WATER COM-)

PANY NO. 5, WADE H. (

BOYER and LEAH A.)

A. BOYER, his wife, (

Defendants. (

.....(

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KNOW ALL MEN BY THESE PRESENTS:

That American Surety Company of New York, a corporation organized and existing under the laws of the State of New York, is held and firmly bound unto Jasper Thomason, appellee in the above cause, in the sum of Three Hundred Dollars (\$300.00), conditioned that

WHEREAS on the 25th day of May, 1925, an order was entered in the above entitled cause quashing the service of subpoena on defendant Jasper Thomason and setting aside the decree as to defendant Jasper Thomason, and an order was entered in the above entitled cause on the 9th day of July, 1925, denying plaintiff's motion to set aside said order of May 25th, 1925, and FRANCES INVESTMENT COMPANY, a corporation, above named, having obtained an appeal to the Circuit Court of Appeals for the Ninth Circuit to reverse the said orders, and a citation having been

and known to me to be the persons who executed the within instrument on behalf of the Corporation therein named, and acknowledged to me that such Corporation executed the same.

In Witness Whereof, I have hereunto set my hand and affixed my official seal the day and year in this Certificate first above written.

Helen R. Durrow

Notary Public in and for the County of Los Angeles, State of California.

(Seal)

My Commission expires July 14, 1926

Approved July 20, 1925.

Wm P James.

Judge

[Endorsed]: In Equity D-61-J In the DISTRICT COURT OF THE UNITED STATES SOUTHERN DISTRICT OF CALIFORNIA SOUTHERN DIVISION FRANCES INVESTMENT COMPANY, a corporation, Plaintiff, v. FRIEND J. AUSTIN, et al, Defendants BOND FILED JUL 20 1925 CHAS. N. WILLIAMS, Clerk By R S Zimmerman Deputy Clerk Law Offices CHARLES GREENBERG LAURENCE W. BEILENSON 1231 C. C. Chapman Bldg. Los Angeles, Cal. TUCKER 8211

IN THE DISTRICT COURT OF THE UNITED STATES, SOUTHERN DISTRICT OF CALIFORNIA, SOUTHERN DIVISION.

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FRANCES INVESTMENT) IN EQUITY
COMPANY, a corporation, (
Plaintiff,) D-61-J.
v. (

FRIEND J. AUSTIN, LET- (
TIE M. AUSTIN, his wife,) PRAECIPE.
WILLIAM MARTIN BEL- (
FORD, ANNIE MARIE BEL-)
FORD, his wife, THE PEOPLES ABSTRACT & TITLE)
COMPANY, a corporation, H. (
F. DAVIS and MERYLE T.)
DAVIS, his wife, JOHN W. (
AUSTIN and LAURA A.)
AUSTIN, his wife, JASPER (
THOMASON, JESSE BOYD)
FILCHER, THOMAS EDWIN (
GILL and MYRA RITZINGER)
GILL, his wife, HARRY D. (
ARON, T. P. SANTA, ROB-)
ERT B. WALKER, JOHN (
DOE, RICHARD DOE, JOHN)
ROE, RICHARD ROE, (
SARAH DOE, JANE DOE,)
SARAH ROE, JANE ROE, (
A-1 COMPANY, a corporation,)
B-1 COMPANY, a corporation, (
C-1 COMPANY, a corporation,)
IMPERIAL WATER COM- (
PANY NO. 1, IMPERIAL)
WATER COMPANY NO. 3, (
IMPERIAL WATER COM-)
PANY NO. 5, WADE H. (

BOYER and LEAH A.)
 A. BOYER, his wife, ()
 Defendants. ()
()

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To the Clerk of the above entitled court:

Please incorporate the following papers and documents in the above entitled suit into the transcript on the appeal of plaintiff from the order entered in the above entitled cause on the 25th day of May, 1925, quashing the service on defendant Jasper Thomason and setting aside the decree as to defendant Jasper Thomason, and from the order entered in the above entitled cause on the 9th day of July, 1925, denying plaintiff's motion to set aside said order of May 25, 1925, the petition for said appeal and the order allowing said appeal having been filed July 20, 1925:

1. Bill in equity filed February 15, 1918.
2. The subpoena ad respondendum issued May 15, 1918, filed February 27, 1918, and the return thereon.
3. Stipulation for leave to file supplemental bill of complaint and order thereon filed December 15, 1919.
4. Supplemental bill in equity filed January 23, 1920.
5. Order for service of subpoena ad respondendum filed January 23, 1920.
6. Subpoena ad respondendum filed March 17, 1920, and return thereon.
7. Order amending supplemental complaint made February 2, 1920.

8. Motion for leave to file amended supplemental complaint filed April 3, 1920.

9. Amended supplemental bill in equity filed April 5, 1920.

10. Order of court made and entered November 15, 1920, granting plaintiff leave to amend amended supplemental bill by interlineation.

11. Alias subpoena ad respondendum to answer amended supplemental bill of complaint issued May 9, 1921, filed June 10, 1921, together with the return thereon made May 13, 1921, the further return thereon made October 4, 1923, and filed October 4, 1923, and the further return filed October 12, 1923, and the amendments thereto.

12. Order made and entered October 5, 1923, granting motion of plaintiff to amend bill of complaint.

13. Praeceptum for order pro confesso against defendant Jasper Thomason filed October 12, 1923.

14. Order pro confesso against defendant Jasper Thomason entered October 12, 1923.

15. Final decree filed, entered, and recorded March 24, 1924.

16. Notice of special appearance and of motion to quash service of subpoena, and the affidavit of Jasper Thomason verified April 7, 1925, the affidavit of Rosamond Mildred Hunt verified April 7, 1925, the affidavit of Nellie M. Thomason verified April 7, 1925, which said notice and all of said affidavits were filed April 15, 1925.

17. Motion to quash service of subpoena filed April 27, 1925.

18. Notice of motion by plaintiff for a continuance filed April 27, 1925.

19. Affidavit of Joseph L. Lewinson in support of motion for a continuance filed April 27, 1925.

20. Minute order made and entered April 27, 1925, denying continuance.

21. Affidavit of Joseph L. Lewinson opposing motion to quash filed April 29, 1925.

22. Affidavit of Meryle Thomason Davis verified and filed April 27, 1925.

23. Affidavit of W. S. Mortenson verified April 26, 1925, filed April 27, 1925.

24. Affidavit of Rosamond Mildred Hunt verified April 26, 1925, filed April 27, 1925.

25. Affidavit of Meryle Thomason Davis verified April 30, 1925.

26. Application to amend marshal's return nunc pro tunc filed May 7, 1925.

27. Affidavit of Joseph L. Lewinson verified and filed May 7, 1925.

28. Affidavit of W. S. Walton verified May 6, 1925, filed May 7, 1925.

29. "Memorandum in opposition to application to amend marshal's return" received for by attorneys for plaintiff May 13, 1925.

30. Affidavit of Rosamond Mildred Hunt verified May 12, 1925, received for by attorneys for plaintiff May 13, 1925.

31. Affidavit of Meryle Thomason Davis verified May 12, 1925, received for by attorneys for plaintiff May 13, 1925.

32. Affidavit of Emma Harris verified May 12, 1925, receipted for by attorneys for plaintiff May 13, 1925.

34. Affidavit of Gladys Thomason Schupp verified May 12, 1925, receipted for by attorneys for plaintiff May 13, 1925.

35. Affidavit of Verna Thomason Stark verified May 12, 1925, receipted for by attorneys for plaintiff May 13, 1925.

36. Plaintiff's "Reply to defendant Thomason's affidavits in brief in opposition to motion to amend return nunc pro tunc" receipted for by attorneys for defendant Jasper Thomason on May 16, 1925.

37. Order relative to filing affidavit of W. S. Walton and amendment to marshal's return nunc pro tunc dated May 22, 1925.

38. "Memorandum opinion and order" made, entered and filed May 25, 1925.

39. Notice of motion to set aside order quashing service of subpoena, etc., filed July 3, 1925.

40. Motion to set aside order quashing service of subpoena, etc., filed July 3, 1925.

41. Minutes of court for July 6, 1925, on hearing of said motion to set aside order quashing service of subpoena, etc.

42. Affidavit of service by F. C. Rhoades verified and filed July 6, 1925.

43. Minute order denying motion to set aside order vacating service of subpoena, etc., entered July 9, 1925.

44. Notice of petition for appeal dated July 15, 1925, filed July 15, 1925.

45. Petition for appeal and order allowing appeal.
46. Assignment of errors.
47. Citation.
48. Bond.

William Story Jr
Joseph L. Lewinson
Solicitors for Plaintiff

Laurence W Beilenson
Of Counsel.

Received a copy of the within Praeceptum this 20th day of July, 1925.

Wm T. Kendrick
Newlin and Ashburn

Solicitors for Defendant Jasper Thomason
appearing specially herein for purpose of
contesting jurisdiction over person and
not appearing generally herein.

[Endorsed]: In Equity D-61-J In the DISTRICT COURT OF THE UNITED STATES SOUTHERN DISTRICT OF CALIFORNIA, SOUTHERN DIVISION FRANCES INVESTMENT COMPANY, a corporation, Plaintiff v. FRIEND J. AUSTIN, et al, Defendants. PRAECEPTUM FILED JUL 20 1925 CHAS. N. WILLIAMS, Clerk By R S Zimmerman Deputy Clerk Law offices of CHARLES GREENBERG LAURENCE W. BEILENSEN 1231 C. C. Chapman Bldg. Los Angeles, Cal. TUCKER 8211

UNITED STATES DISTRICT COURT SOUTH-
ERN DISTRICT OF CALIFORNIA
SOUTHERN DIVISON

FRANCES INVESTMENT	)	No. D-61-J Eq.
COMPANY, a corporation,)	
)	
Plaintiff,)	
)	
vs.)	STIPULATION
)	
FRIEND J. AUSTIN, et al.,)	
)	
Defendants.)	

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IT IS HEREBY STIPULATED AND AGREED by and between the plaintiff and the defendant Jasper Thomason, by and through their respective solicitors (the solicitors for defendant Jasper Thomason appearing specially herein for purpose of contesting jurisdiction over person and not appearing generally herein), as follows: (1) That there shall be omitted from the record and transcript on appeal of plaintiff herein, the "Reply brief of plaintiff on motion to set aside the order quashing service", filed herein on July 8, 1925, and the "Memorandum of Amici Curiae on motion to set aside order quashing service" which was served upon counsel for plaintiff on July 9, 1925, and plaintiff's "Points and Authorities" attached to and filed with Plaintiff's "Notice of motion to set aside

order quashing service of subpoena, etc." filed herein July 3, 1925.

William Story, Jr. & Joseph L. Lewinson
Solicitors for plaintiff

Laurence W. Beilenson

Of Counsel

Wm. T. Kendrick

and Newlin & Ashburn

Solicitors for defendant Jasper Thomason,
appearing specially herein for purpose of
contesting jurisdiction and not appearing
generally herein.

[Endorsed]: D 61 UNITED STATES DISTRICT
COURT SOUTHERN DISTRICT OF CALIFOR-
NIA SOUTHERN DIVISION FRANCES IN-
VESTMENT COMPANY, a corporation, Plaintiff,
vs. FRIEND J. AUSTIN, et al., Defendants. STIP-
ULATION FILED AUG 1 1925 CHAS. N. WIL-
LIAMS, Clerk By L J Cordes Deputy Clerk Law
Offices CHARLES GREENBERG LAURENCE W.
BEILENSEN 1231 C. C. Chapman Bldg. Los An-
geles, Cal. TUCKER 8211

UNITED STATES DISTRICT COURT SOUTH-ERN DISTRICT OF CALIFORNIA SOUTHERN DIVISION

FRANCES INVESTMENT) No. D-61-J Eq.
COMPANY, a corporation,)
Plaintiff,) PRAECIPE FOR
vs) INCLUSION OF
FRIEND J. AUSTIN, et. al.,) ADDITIONAL,
Defendants.) PORTIONS OF
RECORD IN
TRANSCRIPT

TO THE CLERK OF THE ABOVE NAMED COURT:

The undersigned, appearing specially herein on behalf of the defendant Jasper Thomason, for the sole purpose of contesting the court's jurisdiction over the person of the said defendant, and not appearing generally herein, do hereby request and demand that those portions of the record in the above entitled cause which are hereinafter specified be incorporated into the transcript on appeal herein, in addition to the portions of the record specified in the praecipe heretofore filed herein by the appellant. The said additional documents which the appellee desires so incorporated into the said transcript are the following, to-wit:

- 1. "Praecipe for entry of special appearance", filed herein April 15, 1925.

2. "Memorandum of points and authorities in support of motion to quash service of subpoena, etc.", filed herein April 15, 1925.

3. "Affidavit of A. W. Ashburn", verified and filed herein April 27, 1925.

4. Plaintiff's "Memorandum of points and authorities in opposition to motion to quash service of subpoena, etc.", which was served upon solicitors for defendant Thomason on April 29, 1925.

5. "Reply brief on motion to quash," which was served upon solicitors for plaintiff on April 30, 1925.

6. Plaintiff's "Memorandum of authorities in support of court's jurisdiction and application for orders nunc pro tunc," which was served upon solicitors for defendant Thomason on May 7, 1925.

7. Order made herein on May 25, 1925, granting motion to quash service of summons and vacating and setting aside decree entered against defendant Thomason.

8. "Reply brief of plaintiff on motion to set aside the order quashing service", filed herein on July 8, 1925.

9. "Memorandum of Amici Curiae on motion to set aside order quashing service", which was served upon counsel for plaintiff on July 9, 1925.

Dated: July 30, 1925.

Wm. T. Kendrick and
Newlin & Ashburn,

Solicitors for defendant Jasper Thomason,
appearing specially herein for purpose of
contesting jurisdiction over person and
not appearing generally herein.

[Endorsed]: No. D-61-J Eq. In the United States District Court, in and for the SOUTHERN DISTRICT OF CALIFORNIA, Southern Division FRANCES INVESTMENT COMPANY a corporation Plaintiff vs. FRIEND J. AUSTIN, et. al. Defendants PRAECIPE FOR INCLUSION OF ADDITIONAL PORTIONS OF RECORD IN TRANSCRIPT Received copy of the within..... this 30 day of July 1925 Laurence W. Beilenson Attorney for plff. FILED JUL 30 1925 CHAS. N. WILLIAMS, Clerk By L J Cordes Deputy Clerk NEWLIN & ASHBURN 935 Title Insurance Building Telephone Main 0150 Los Angeles, Cal. Solicitors for Jasper Thomason

IN THE DISTRICT COURT OF THE UNITED
STATES, SOUTHERN DISTRICT OF CALI-
FORNIA, SOUTHERN DIVISION.

FRANCES INVESMENT)	
COMPANY, a corporation,)	
Plaintiff,)	CLERK'S
-vs-)	CERTIFICATE.
FRIEND J. AUSTIN, et al,)	
Defendants.)	

I, CHAS. N. WILLIAMS, Clerk of the United States District Court for the Southern District of California, do hereby certify the foregoing volume containing 357 pages, numbered from 1 to 357 inclusive, to be the transcript on appeal in the above entitled cause, as printed by the appellant, and presented to me for comparison and certification, and that the same has been compared and corrected by me and contains a full, true and correct copy of the bill in equity filed February 15, 1918; citation; the subpoena ad respondendum issued May 15, 1918, filed February 27, 1918, and the return thereon; stipulation for leave to file supplemental bill of complaint and order thereon filed December 15, 1919; supplemental bill in equity filed January 23, 1920; order for service of subpoena ad respondendum filed January 23, 1920; subpoena ad respondendum filed March 17, 1920, and return thereon; order amending supplemental complaint made February 2, 1920; motion for leave to file amended supplemental complaint filed April 3, 1920; amended supplemental bill in equity filed April 5, 1920; order of court made and entered November 15, 1920, granting

plaintiff leave to amend amended supplemental bill by interlineation; alias subpoena ad respondendum to answer amended supplemental bill of complaint issued May 9, 1921, filed June 10, 1921, together with the return thereon made May 13, 1921, the further return thereon made October 4, 1923, and filed October 4, 1923, and the further return filed October 12, 1923, and the amendments thereto; order made and entered October 5, 1923, granting motion of plaintiff to amend bill of complaint; praecipe for order pro confesso against defendant Jasper Thomason filed October 12, 1923; order pro confesso against defendant Jasper Thomason entered October 12, 1923; final decree filed, entered, and recorded March 24, 1924; Praecipe for entry of special appearance, filed herein April 15, 1925; notice of special appearance and of motion to quash service of subpoena, and the affidavit of Jasper Thomason verified April 7, 1925, the affidavit of Rosamond Mildred Hunt verified April 7, 1925, the affidavit of Nellie M. Thomason verified April 7, 1925, which said notice and all of said affidavits were filed April 15, 1925; motion to quash service of subpoena filed April 27, 1925; memorandum of points and authorities in support of motion to quash service of subpoena, etc., filed herein April 15, 1925; notice of motion by plaintiff for a continuance filed April 27, 1925; affidavit of Joseph L. Lewinson in support of motion for a continuance filed April 27, 1925; affidavit of A. W. Ashburn, verified and filed herein April 27, 1925; minute order made and entered April 27, 1925, denying continuance; plaintiff's memorandum of points and au-

thorities in opposition to motion to quash service of subpoena, etc. which was served upon solicitors for defendant Thomason on April 29, 1925; affidavit of Joseph L. Lewinson opposing motion to quash filed April 29, 1925; affidavit of Meryle Thomason Davis verified and filed April 27, 1925; affidavit of W. S. Mortenson verified April 26, 1925, filed April 27, 1925; affidavit of Rosamond Mildred Hunt verified April 26, 1925, filed April 27, 1925; affidavit of Meryle Thomason Davis verified April 30, 1925; reply brief on motion to quash, which was served upon solicitors for plaintiff on April 30, 1925; application to amend marshal's return nunc pro tunc filed May 7, 1925; plaintiff's memorandum of authorities in support of court's jurisdiction and application for orders nunc pro tunc, which was served upon solicitors for defendant Thomason on May 7, 1925; affidavit of Joseph L. Lewinson verified and filed May 7, 1925; affidavit of W. S. Walton verified May 6, 1925, filed May 7, 1925; memorandum in opposition to application to amend marshal's return received for by attorneys for plaintiff May 13, 1925; affidavit of Rosamond Mildred Hunt verified May 12, 1925, received for by attorneys for plaintiff May 13, 1925; affidavit of Meryle Thomason Davis verified May 12, 1925, received for by attorneys for plaintiff May 13, 1925; affidavit of Emma Harris verified May 12, 1925, received for by attorneys for plaintiff May 13, 1925; affidavit of Gladys Thomason Schupp verified May 12, 1925, received for by attorneys for plaintiff May 13, 1925; affidavit of Verna Thomason Stark verified May 12, 1925, received for

by attorneys for plaintiff May 13, 1925; plaintiff's reply to defendant Thomason's affidavits in brief in opposition to motion to amend return nunc pro tunc, receipted for by attorneys for defendant Jasper Thomason on May 16, 1925; order relative to filing affidavit of W. S. Walton and amendment to marshal's return nunc pro tunc dated May 22, 1925; order made herein on May 25, 1925, granting motion to quash service of summons and vacating and setting aside decree entered against defendant Thomason; memorandum opinion and order made, entered and filed May 25, 1925; notice of motion to set aside order quashing service of subpoena, etc., filed July 3, 1925; motion to set aside order quashing service of subpoena, etc., filed July 3, 1925; minutes of court for July 6, 1925, on hearing of said motion to set aside order quashing service of subpoena, etc.; affidavit of service by F. C. Rhoades verified and filed July 6, 1925; reply brief of plaintiff on motion to set aside the order quashing service, filed herein on July 8, 1925; memorandum of amici curiae on motion to set aside order quashing service, which was served upon counsel for plaintiff on July 9, 1925; minute order denying motion to set aside order vacating service of subpoena, etc., entered July 9, 1925; notice of petition for appeal dated July 15, 1925, filed July 15, 1925; petition for appeal and order allowing appeal; assignment of errors; bond and praecipe.

I DO FURTHER CERTIFY that the fees of the Clerk for comparing, correcting and certifying the foregoing Record on Appeal amount to. *\$57.00*

and that said amount has been paid me by the appellant herein.

IN TESTIMONY WHEREOF, I have hereunto set my hand and affixed the Seal of the District Court of the United States of America, in and for the Southern District of California, Southern Division, this *17th* day of September, in the year of Our Lord One Thousand Nine Hundred and Twenty-five, and of our Independence the One Hundred and Fiftieth.

CHAS. N. WILLIAMS,
Clerk of the District Court of the
United States of America, in
and for the Southern District
of California.

By *R. S. Zimmerman*
Deputy.

Pages 148 to 213 are not in chronological order.

PARKER, STONE & BAIRD CO.

